

7 Bruce Avenue, Manly

Statement of Environmental Effects for Development Application



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Executive Summary

This Statement of Environmental Effects (SEE) has been prepared in support of a Development Application (DA) made to Northern Beaches Council ('the Council') under Part 4 of the *Environmental Planning and Assessment (EP&A) Act 1979*.

The DA seeks consent for substantial demolition and rebuilding of the existing dwelling house located at 7 Bruce Avenue, Manly ('the site'), including an additional storey.

The site is subject to development consent DA2018/0639 for alterations and additions to the existing dwelling house. This DA seeks consent for the demolition of further elements of the existing dwelling house, but maintains the approved height, roof form and building footprint consistent with DA2018/0639.

A deferred commencement consent was issued for DA2018/0639 on 21 February 2019, which required amendments to the design of the roof of the additional level. Amended plans were submitted with an altered roof design to satisfy the condition of the deferred commencement and the consent was activated on 18 December 2019.

The amended roof form required by the terms of the consent DA2018/0639 significantly impacted on the floor to ceiling heights of the uppermost level and reduced the usability and amenity of the space. Furthermore, as part of detailed design development, structural investigations were undertaken which identified that the existing structure had deteriorated. While the proposal retains portions of the south-western and north-western walls, it was found not to be feasible to retain portions of the other elevations given the safety risk during the demolition process.

As a consequence of the reduced functionality and amenity of the uppermost level and the findings of the structural investigations, further demolition of the existing structure is necessitated, including the demolition of existing floors and internal walls and the north-eastern and southern-eastern elevations. Importantly, the proposal remains consistent with the height, roof form and building footprint of the approved DA2018/0639.

The proposal includes the following key elements:

- Demolition of existing internal walls, existing floor levels, with the exception of the boatshed, and northeast, south-east elevations and part of the north-west elevation;
- · Reconstruction of the north-east, south-east elevations and part of the north-west elevation;
- · Construction of new internal walls and floors and associated reconfiguration of the dwelling layout, including new balconies;
- Addition of a new upper level master bedroom and terrace;
- Alterations to the existing garage to accommodate a mechanical car stacker;
- Demolition of existing side boundary stairs and construction of new stairs; and
- Associated landscaping and redesign of private open space.

The DA and this SEE have been prepared in accordance with the *EP&A Act 1979* and the Environmental Planning and Assessment (EP&A) Regulation 2000.

This SEE addresses the relevant heads of consideration listed under Section 4.15(1) of the *EP&A Act 1979*, and provides an assessment of the proposed development against the relevant Environmental Planning Instruments (EPIs) and other planning controls applicable to the site and to the proposal.

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The key planning controls are included within:

- · Manly Local Environmental Plan (MLEP) 2013;
- Manly Development Control Plan (MDCP) 2013;
- · Sydney Regional Environmental Plan (Sydney Harbour Catchment) (SREP Sydney Harbour) 2005; and
- · Sydney Harbour Foreshores and Waterways Area Development Control Plan (SHFWA DCP) 2005.

The proposed development is permissible with consent in the E4 Environmental Living zone under MLEP 2013, and is consistent with the broad objectives of the zone, and with matters for consideration outlined in SREP Sydney Harbour 2005.

The proposal complies with the maximum floor space ratio (FSR) of 0.6:1 applying under MLEP 2013. As with the existing dwelling, the proposal will partly exceed the 8.5m building height control, and as such a Clause 4.6 Variation has been provided. The proposal maintains the approved height and building height and does increase or alter the approved variation to the building height standard.

The site fronts Little Manly Cove and is subject to the foreshore provisions of MLEP 2013. Consistent with these provisions, the proposal does not have unreasonable impacts on the natural processes or environmental qualities of the foreshore. Further, the bulk and scale of the proposal is compatible with the surrounding development and will not adversely impact on the character or scenic qualities of the foreshore.

The proposal substantially complies with the provisions of MDCP 2013, SREP (Sydney Harbour) 2005, and the SHFWA DCP 2005.

The proposed development is of a form, height, scale, and siting consistent with neighbouring development. The development delivers landscaped areas and areas of private open space compatible with the landscaped context of the site, suitable for the enjoyment of the residents and in keeping with the character of the locality.

An assessment of the potential environmental impacts of the development concludes that the proposal will not give rise to unacceptable impacts on the natural or built environment, or to any adjoining properties or the harbour in terms of visual impacts, bulk, scale, privacy, view loss, or overshadowing. The proposal does not result in additional view loss, visual impacts or overshadowing from the approved scheme.

Based on the assessment undertaken, approval of the DA is sought.

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1.0 Introduction

1.1 Overview

This SEE has been prepared in support of a DA for substantial demolition and rebuilding of the existing dwelling house located at 7 Bruce Avenue, Manly ('the site'), including an additional storey.

1.2 Scope and Format of the Statement of Environmental Effects

This Statement has been prepared in accordance with the requirements of Schedule 1, Part 1, of the EP&A Regulation 2000, and provides an assessment consistent with the heads of consideration under Section 4.15(1) of the EP&A Act 1979, which are relevant to the consent authority's assessment of the DA.

Accordingly, the SEE is structured into sections as follows:

- · Section 1 provides an overview of the project and of this SEE;
- · Section 2 describes the site, locality and surrounding development;
- · Section 3 describes the proposed development and provides details of all of the proposed works;
- Section 4 identifies the applicable statutory controls and policies, and provides an evaluation of the proposed development against the relevant controls;
- Section 5 provides an assessment of the proposal and its likely impacts on the environment, and in particular the potential impacts on adjoining properties and the surrounding area; and
- Section 6 provides a conclusion on the proposal.

1.3 Supporting Plans and Documentation

This Statement has been prepared with input from a number of technical and design documents which have been prepared to accompany this DA. These documents are included as Attachments to this statement, and are identified in Table 1 below.

Document Name	Prepared by
Survey Plan	Norton Survey Partners
Architectural Drawing Package	Durbach Block Jaggers Architects
Photomontages	Durbach Block Jaggers Architects
Landscape Plan	Landart
Terrestrial Biodiversity Report	GIS Environmental Consultants
BASIX Certificates and BASIX Stamped Plans	Durbach Block Jaggers Architects, Adriana Segovia
Stormwater Management Plan	ITM Design Consulting Hydraulic Engineers
Sediment and Erosion Control Plan	ITM Design Consulting Hydraulic Engineers

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Geotechnical Assessment	JK Geotechnics
Proposed Alterations and Additions and Implications for the Existing Structure	SDA Structures
Waste Management Plan	Waste Management Template

Table 1: Plans and documents prepared to accompany this statement

1.4 Cost of Works

The cost of works for the purpose of determining the DA fee for the proposed development has been calculated in accordance with Clause 255(1) of the EP&A Regulation 2000 and is \$975,000 including GST. The cost of works is detailed in the Cost Summary Report submitted with this application.

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2.0 Site Description and Context

2.1 Site Location and Description

The site is located at 7 Bruce Avenue, Manly and is legally described as Lot 2 in DP 218836. It is located at the eastern end of Manly towards Smedleys Point. Little Manly Beach and Sydney Harbour National Park sit to the east of the site, with Manly Cove and North Harbour to the north-west.

The location of the site in this context is shown in Figure 1.

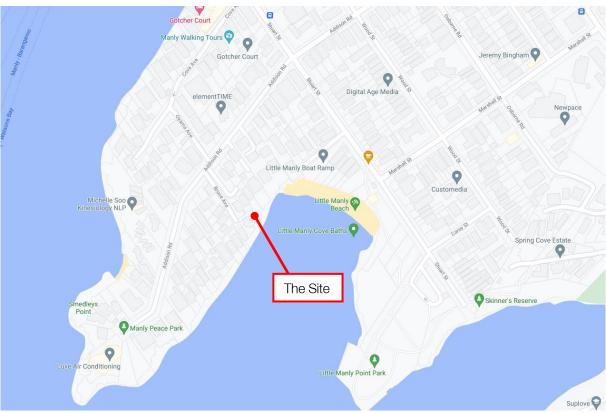


Figure 1: Location plan (Source: Google Maps)

The site is rectangular, with a battle-axe access from Bruce Avenue and direct frontage to Little Manly Cove to the south.

The location of the site is shown in Figure 2.



Figure 2: Aerial view of site and locality (Source: SIX Maps)

The site has an area of approximately 400m^2 and a 6.2m frontage to Bruce Avenue. The existing dwelling is setback between 5.9m and 7.7m from the foreshore boundary. The side and rear boundaries are as follows:

- · South-western boundary (side): 1.3m;
- · North-eastern boundary (side) 1.1m to 4.09m; and
- · North-western boundary (rear): 6.8m.

The garage is located within the access handle of the battle-axe access, and has a variable setback to Bruce Avenue of approximately 1.8m to 2.5m. Between the garage and dwelling are stairs, ramped pathways, and a series of retaining walls and garden beds.

The site is located at the end of Bruce Avenue, a cul-de-sac which slopes towards Little Manly Cove.

A survey plan of the site prepared by Norton Survey Partners is provided at Attachment 1.

2.1.1 Existing Development on the Site

The site is currently occupied by a part two (2)/part three (3) storey brick dwelling house, garage and associated stairs and landscaping.

The principal areas of the dwelling occupy the ground and upper level. The lower ground level accommodates a storage area and boatshed which has direct access to a boat ramp and pontoon. The pontoon has partially collapsed.

The existing dwelling is setback between 5.9m and 7.7m from the foreshore boundary. The side and rear boundaries are as follows:

· South western boundary (side):1.3m;

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- · North eastern boundary (side): 1.1m to 4.09m; and
- · Northern western boundary (rear): 6.8m.

The garage is located within the access handle of the battle-axe access, and has a variable setback to Bruce Avenue of approximately 1.8m to 2.5m. Between the garage and dwelling are stairs, ramped pathways, and a series of retaining walls and garden beds.

Vehicle access to the garage is directly off Bruce Avenue. Separate pedestrian access from Bruce Avenue to the dwelling is via ramp which extends along the south-eastern side of the garage.

Concrete stairs extending along the north-eastern boundary provide access to an elevated patio fronting the foreshore. A set of small stairs provides direct access between the patio and foreshore.

A natural rock formation abuts the south corner of the dwelling and restricts access to the foreshore along the south-western boundary.

Photographs of the site and existing building are shown in Figures 3 to 10.



Figure 3: View of existing garage and entrance of 7 Bruce Avenue (subject site)



Figure 4: View towards Little Manly Cove from the side boundary of the subject site



Figure 5: View towards the subject site, with 5 Bruce Avenue in the background



Figure 6: View towards Little Manly Cove and Little Manly Beach from the terrace of the subject site



Figure 7: View of rear of the subject site and boat ramp/pontoon. The pontoon has since been repaired in accordance with an approval issued by Roads and Maritime Services.





 $\label{properties} \mbox{Figure 8: View of the subject site and neighbouring properties from Little Manly Point looking west$



 $\label{properties} \mbox{Figure 9: View of rear of subject site and neighbouring properties from Little Manly Point looking west$

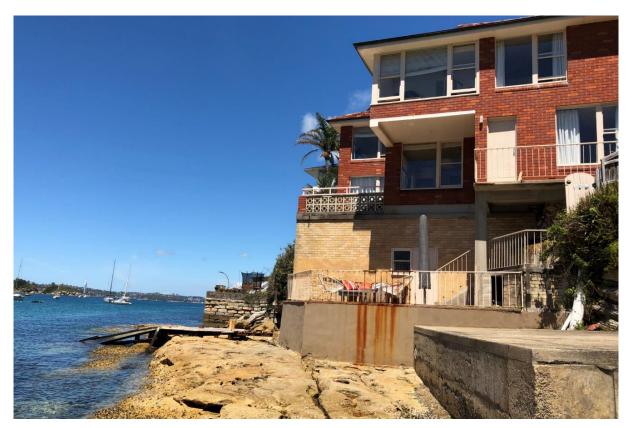


Figure 10: View of rear of subject site looking south

2.2 Surrounding Development and Land Uses

Existing development along the foreshore is characterised by predominantly three (3) and four (4) storey dwelling houses and residential flat buildings. Most homes along the waterfront have been designed and sited to take advantage of the expansive water views of Little Manly Cove and North Harbour. This is particularly the case with more recent development, which has been designed to maximise those views.

The development immediately adjoining the site is described below:

- 1 Bruce Avenue:
 - Located to the north and north east;
 - A three (3) storey rendered dwelling house with frontage to the foreshore.
- 3 Bruce Avenue, located to the north west:
 - A three (3) storey brick residential building accommodating two (2) dwellings;
 - As this property is located directly to the rear of the site it does not have direct frontage to the foreshore.
- 5 Bruce Avenue:
 - Located to the north west;
 - A three (3) storey rendered and stone dwelling house;
 - This property is also located to the rear of the site and does not have direct frontage to the foreshore.
- 9 Bruce Avenue:
 - Located to the south west;
 - A three (3) storey dwelling with frontage to the foreshore.

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Other nearby development along the foreshore includes a three (3) storey dwelling house at 11 Bruce Avenue, and four (4) storey residential flat building at 46 Addison Road.

The site and surrounding development is shown in Figure 11 below taken from Little Manly Point on the other side of the harbour.



Figure 11: View of site and surrounds from Little Manly Point located to the north (Source: Travel Blog. Happiness and Things)

The area is a known habitat of threatened species listed under the *Biodiversity Conservation Act 2016*, being the Endangered Species (Population) of Little Penguins Manly and the Endangered Species (Population) of Long Nosed Bandicoots at North Head.

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3.0 Proposed Development

3.1 Background

The site is subject to a development consent (Reference DA2018/0639) for alterations and additions to the existing dwelling house. DA2018/0639 was issued as a deferred commencement consent on 21 February 2019 by the Northern Beaches Local Planning Panel. The deferred commencement required amendments to the design of the roof of the additional level to reduce overshadowing to the windows of the adjoining property at 9 Bruce Avenue.

Amended plans were submitted with an altered roof design to satisfy the condition of the deferred commencement and the consent was activated on 18 December 2019. A copy of the development consent is included at Attachment 2.

The amended roof form significantly impacted on the floor to ceiling heights of the uppermost level and reduced the usability and amenity of the space. It was considered undesirable to alter the height and roof form of the approval given the potential for view impacts. As such lowering the floor level was considered the preferred option. At the same time, structural investigations undertaken as part of the detailed design development found significant deterioration in parts of the existing structure.

The Existing Building Condition – Structural Adequacy advice prepared by SDA Structures (Attachment 3) identifies that the structure surrounding the existing boat shed that supports the dwelling is deteriorated and requires rectification, replacement or strengthening to ensure ongoing structural adequacy. Retaining portion of the north-east and south-eastern elevations as provided for in DA2018/0639 was found not to be feasible and to pose a safety risk during the demolition process.

As consequence of the reduced functionality and amenity of the uppermost level and the findings of the structural investigations, this DA seeks demolition of additional existing structure from the approved DA 2018/0639, including the demolition of existing floors and internal walls and the north-eastern and southern-eastern elevations. The extent of demolition proposed reflects the amount of existing structure that can be safely retained during the construction as identified by SDA, and that is sufficient to support the loads associated with the proposed works.

3.2 Overview of Proposal

The DA seeks consent for substantial demolition and rebuilding of the existing dwelling 7 Bruce Avenue, Manly, including an additional storey. The proposed development comprises:

- Demolition of existing internal walls, existing floor levels, with the exception of the boatshed, and northeast, south-east elevations and part of the north-west elevation;
- Reconstruction of the north-east, south-east elevations and part of the north-west elevation;
- Construction of new internal walls and floors and associated reconfiguration of the dwelling layout, including new balconies;
- Addition of a new upper level master bedroom and terrace;
- · Alterations to the existing garage to accommodate a mechanical car stacker;
- Demolition of existing side boundary stairs and construction of new stairs; and
- Associated landscaping and redesign of private open space.

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The proposal is detailed in the Architectural Drawing Package prepared by Durbach Block Jaggers (DBJ), included at Attachment 4 and is described in the following sections of this SEE. Photomontages of the proposed development are also included in the architectural package at Attachment 4.

A comparison set of the approved drawings and proposed drawings has also been prepared by DBJ and is included at Attachment 5. As noted above, the proposal maintains the approved building height and roof form of DA2018/0639. The key changes between approved DA and the proposal include:

- The demolition of existing floor levels, with the exception of boatshed, and their replacement with new, lower floors:
- · Full demolition of the north-east and south-east elevations;
- · Demolition of all internal walls as result of the replacement of the floors;
- · Minor reconfiguration and reorientating of the new upper level terrace; and
- · Alterations to the existing garage to accommodate a mechanical stacker.



Figure 12: Extract of the photomontage illustrating the proposal (Source Durbach Block Jaggers)

3.3 Development Statistics

The key statistics for the proposal are summarised in Table 2 below. This includes a comparison of the existing development, approved DA 2018/0639 and proposal development. Differences between the approved scheme and proposal are highlighted in red.

Element	Existing	Approved	Proposal
Site Area	430m²	No Change	No Change
Gross Floor Area (GFA)	211m ²	230m ²	234m²
Floor Space Ratio (FSR)	0.49:1	0.53:1:1	0.54:1:1
Building Height	2 storeys: 11.45m max (RL13.97)	3 storeys 11.928m max (RL14.94)	3 storeys 11.928m max

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Floor levels	Boatshed level: RL2.52 Lower ground: RL6.14 Ground: RL8.750	Boatshed level: RL 2.52 Lower ground: RL6.14 Ground: RL8.750 Upper level: RL11.6	Boatshed level: RL 2.52 Lower ground: RL5.22 Ground: RL8.170 Upper level: RL11.12
Open space	187m^2 (43% of the site area)	245m ² (57% site area)	245m ² (57% site area)
Landscaped Area	48m ² (11% of the site area)	57m² (13% of the site area)	57m ² (13% of the site area)
Car Parking	1 space	1 space	2 spaces

Table 2: Key Development Statistics

3.4 Detailed Description of the Proposal

3.4.1 Demolition and New Works to Existing Dwelling House

Boatshed Level

- Retention of the existing boatshed level and extension and excavation to accommodate a new internal stair and lift to provide access to the rest of the dwelling.
- · Lowering of the ceiling of the boatshed to accommodate the lowered floors on the levels above.
- Demolition of north-eastern, north-western, south-eastern walls.

Lower Level

- Demolition of the north-east and south-east external walls and construction of new walls. The window openings are largely consistent with the approved DA2018/0639. The windows facing the harbour are larger than the approval due to the replacement of this wall.
- Demolition of the existing floor levels and provision of new floor. The new floor will be at RL 5.22, which is 0.92m lower than the existing and approved floor level at RL6.14.
- Demolition of existing internal walls and construction of new internal walls.
- Provision of a small bedroom balcony on the eastern elevation. The balcony is 1.25m deep and 2.8m long. The size, orientation and location of the balcony is consistent with DA2018/0639, although it is lower due to the lowered floor level.
- New stair and lift.

Consistent with the approved DA2018/0639, the bedrooms are located on this level.

Ground Level

- Demolition of the north-east and south-east external walls and part of the north-west elevation and construction of new walls. The window openings are largely consistent with the approved DA2018/0639. The windows facing the harbour are larger than the approval due to the replacement of this wall.
- Demolition of the existing floor levels and provision of new floor. The new floor will be at RL 8.170, which is 0.58m lower than the existing and approved floor level at RL8.750.
- Demolition of existing internal walls and construction of new internal walls.
- Provision of a balcony on the eastern elevation, directly accessed from the living area. The balcony is 2.11m deep and 7.5m long. The size, orientation and location of the balcony is consistent with DA2018/0639, although it is lower due to the lowered floor level.

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New stair and lift.

Consistent with the approved DA2018/0639 the kitchen and living area are located on this level.

Upper Level Addition

- Demolition of the existing pitched roof and construction of a new storey incorporating:
 - A master bedroom and ensuite.
 - A walled roof terrace.
 - A new bedroom window will be inserted on the north-eastern elevation, and an ear window will be provided to the ensuite on the south western elevation.

Key difference to the approved DA2018/0639 include:

- The floor level is 0.48m lower at RL11.12m compared to RL11.60;
- The staircase has been relocated and a lift is provided;
- · The size of the bedroom has been slightly increased; and
- The terrace has been orientated.

3.4.2 Building Height and Bulk

The existing dwelling presents as a three (3) storey building to the foreshore, with the existing boatshed located below the two (2) habitable levels of the dwelling.

The proposal will present as a three (3) to four (4) storey, with the fourth storey setback to the rear of the dwelling. The fourth storey is integrated with roof and terrace.

The height and bulk of the proposal is consistent with the approved DA2018/0639. This is illustrated in the extracts of the comparison of the approved and proposed drawings provided by Durbach Block Jaggers (Attachment 5) provide in Figures 13-15.



Figure 13: Comparison of approved DA2018/0639 and proposal - North-eastern elevation

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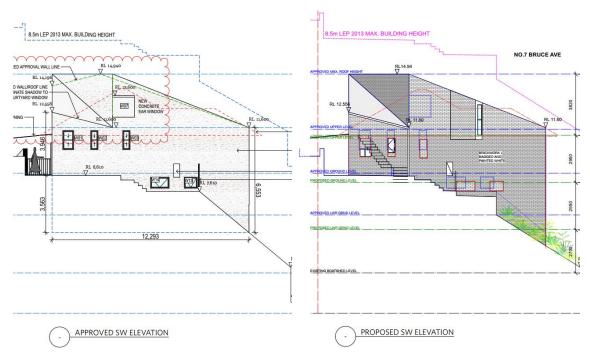


Figure 14: Comparison of approved DA2018/0639 and the proposal – South-western elevation. (Note: the dotted green outline on the approved SW elevation denotes the deferred commencement roof line i.e. prior to the required amendments and activation of the consent).

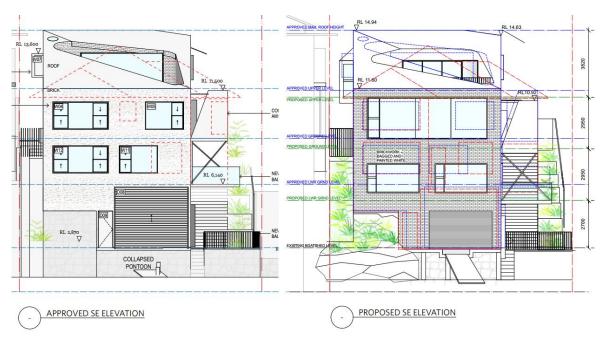


Figure 15: Comparison of approved DA2018/0639 and the proposal – South-eastern elevation. The proposed adjustment to the upper level terrace is visible in the image on the right.

3.4.3 Materials and Finishes

The proposal incorporates high quality materials and finishes, as detailed in the Schedule of Materials and Finishes prepared by DBJ included at Attachment 4, and outlined below:

- · Walls: new and existing external brick walls will be bagged and painted white;
- · Roof tiles: mid-grey concrete pavers;

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- Windows: Aluminium framed windows and doors, Some of the windows are provided with steel reveals.
- · Balustrading: Steel and solid; and
- Paving: sandstone.

3.4.4 Landscaping and External Works

The proposed alterations to the existing landscaping and access across the site are detailed in the Landscape Plan prepared by Landart and included at Attachment 6. Key elements of the landscape works include:

- Demolition of the stairs along the north-eastern boundary and construction of wider stairs providing continuous access from the upper level of the site to the lower terrace adjoining the boatshed;
- Demolition of an existing garden bed and retaining wall and increase in the level of the existing terrace to create a larger contiguous terrace at the rear of the dwelling with a retractable awning;
- · Provision of new garden bed along the north-eastern boundary adjoining the new stairs;
- · Replacement of brick retaining wall with new stone wall; and
- Replacement of existing paving with sandstone paving.

3.4.5 Car Parking

Part of the ground level of the single existing garage will be demolished and excavated to accommodate a car stacker. This will increase car parking on site from one (1) to two (2) spaces.

The height and elevations of the existing garage will remain unchanged. The roof tiles of the garage are proposed to be replaced.

3.4.6 Stormwater Management

The proposed stormwater drainage is detailed in the Stormwater Management Plan prepared by ITM Design Consulting Hydraulic Engineers, included at Attachment 7.

3.4.7 Demolition

The proposal requires substantial demolition of the existing dwelling house and associated structures on site.

A demolition plan has been submitted with the Architectural Drawings Package included at Attachment 4.

All demolition and excavation works will be undertaken in accordance with the provisions of Australian Standard – AS 2601.

3.4.8 Excavation

The proposal requires the following excavation:

- · Minor excavation to the boatshed level to accommodate the lift pit and new internal stair access connecting the boatshed with the rest of the dwelling;
- · Minor excavation along the north-eastern boundary associated with the provisions of new stairs; and
- Excavation to part of the lower ground level to enable the existing floor level to be lowered.

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A Geotechnical Report prepared by JK Geotechnics (refer to Attachment 8) provides an assessment of the geotechnical conditions of the site and concludes that the site is considered suitable for the proposed excavation works, subject to the inclusion of the recommendations contained in the report.

3.4.9 Waste Management

The proposal responds to Council's waste management guidelines as outlined in the Waste Management Plan included at Attachment 9.

A screened bin storage area is located at the rear of the existing garage and will not be visible from the street or any adjoining properties. Existing waste collection arrangements will be maintained.

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4.0 Statutory Assessment

4.1 Section 4.15

Section 4.15 of the *EP&A Act 1979* sets out the statutory matters for consideration against which the proposed development is to be evaluated. The matters for consideration under Section 4.15 are as follows:

"(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest."

The matters for consideration identified in S4.15(1)(a) of the EP&A Act 1979 are addressed in the following section. Subsections (b) to (e) of S4.15(1) of the EP&A Act 1979 are addressed in Section 5 of this SEE.

4.2 Overview of Statutory and Policy Controls

The EPIs and other statutory planning documents and policies which are relevant to the assessment of the proposed development pursuant to S4.15(1)(a) are identified below.

4.2.1 State Environmental Planning Policies

- State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) (BASIX SEPP) 2004
- · Sydney Regional Environmental Plan (Sydney Harbour Catchment) (SREP (Sydney Harbour)) 2005

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- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP) 2017

4.2.2 Local Environmental Plans

Manly Local Environmental Plan (MLEP) 2013

4.2.3 Proposed Environmental Planning Instruments

Draft SEPP (Environment)

4.2.4 Development Control Plans

Manly Development Control Plan (MDCP) 2013

4.2.5 Matters prescribed by the Regulations

Clause 92 of the Environmental Planning and Assessment Regulation 2000 prescribes matters that Council must take into consideration prior to the determination of a development application, including:

- "(1) For the purposes of section 4.15(1)(a)(iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application—
 - (a) (Repealed)
 - (b) in the case of a development application for the demolition of a building, the provisions of AS 2601.
 - (c) in the case of a development application for the carrying out of development on land that is subject to a subdivision order made under Schedule 7 to the Act, the provisions of that order and of any development plan prepared for the land by a relevant authority under that Schedule.
 - (d) in the case of the following development, the Dark Sky Planning Guideline—
 - (i) any development on land within the local government area of Coonamble, City of Dubbo, Gilgandra or Warrumbungle Shire,
 - (ii) development of a class or description included in Schedule 4A to the Act, State significant development or designated development on land less than 200 kilometres from the Siding Spring Observatory,
 - (e) in the case of a development application for development for the purposes of a manor house or multi dwelling housing (terraces), the Medium Density Design Guide for Development Applications published by the Department of Planning and Environment on 6 July 2018, but only if the consent authority is satisfied that there is not a development control plan that adequately addresses such development.
 - Note. A copy of the Guide is available on the website of the Department.
 - (f) in the case of a development application for development for the erection of a building for residential purposes on land in Penrith City Centre, the Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre published by the Department of Planning and Environment on 28 June 2019."

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4.3 Environmental Planning and Assessment (EP&A) Act 1979

Biodiversity Conservation Act 2016

The area is a known habitat of threatened species listed under the *Biodiversity Conservation Act 2016*, being the Endangered Species (Population) of Little Penguins Manly, and the Endangered Species (Population) of Long Nosed Bandicoots at North Head.

Section 1.7 of the *EP&A Act 1979* identifies that the provisions of Part 7 of the *Biodiversity Conservation Act 2016* must be considered.

The requirements of this Act are addressed in the Terrestrial Biodiversity Report prepared by GIS Environmental Consultants (refer to Attachment 10).

Part 7 outlines that where a development is likely to have a significant impact on a threatened species, the DA is to be accompanied by a Biodiversity Development Assessment Report (BDAR). GIS advise that that the proposal is not considered to meet the threshold requirements of *Biodiversity Conservation Act 2016* as:

- "1. The lot size is less than 1ha and there is less than 0.25ha of native vegetation being removed. and
- 2. The proposal will not directly or indirectly a declared Area or Outstanding Biodiversity Significance (AOBV) or an area mapped as having high biodiversity value on the "Biodiversity Values Map". and
- 3. There is not likely to be a significant affect (5-part test of significance test in Section 7.3, BC Act) on any Threatened species or ecological community or their habitat as has determined this report (Terrestrial Biodiversity Report)."

On this basis, the proposal does not require a BDAR. A Terrestrial Biodiversity Report is required, including a five (5) part test of significance for any threatened species of ecological community that may be impacted by the proposal, as has been prepared by GIS and is included at Attachment 10.

4.4 State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 prescribes a statutory process associated with the development of land that is contaminated and needs remediation.

Clause 7 of SEPP 55 provides the following:

- "(1) A consent authority must not consent to the carrying out of any development on land unless:
 - (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."

The site has historically been used for residential purposes. The proposal involves substantial demolition and rebuilding the existing dwelling and does not involve a change of use. On this basis, the proposal is consistent with the provisions of SEPP 55.

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4.5 State Regional Environmental Plan (Sydney Harbour Catchment) (SREP (Sydney Harbour)) 2005

The site is located within the Sydney Harbour Catchment, and is therefore subject to the provisions of the Sydney Harbour REP. The provisions of the SREP relevant to the proposal are addressed below.

4.5.1 Aims of the SREP (2(1)

The aims of the SREP are contained in clause 2(1) and are reproduced below:

- (2) This plan has the following aims with respect to the Sydney Harbour Catchment—
 - (a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained:
 - (i) as an outstanding natural asset; and
 - (ii) as a public asset of national and heritage significance

for existing and future generations

- (b) to ensure a healthy sustainable environment on land and water
- (c) to achieve a high quality and ecologically sustainable urban environment,
- (d) to ensure a prosperous working harbour and an effective transport corridor,
- (e) to encourage a culturally rich and vibrant place for people
- (f) to ensure accessibility to and along Sydney Harbour and its foreshores,
- (g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity
- (h) to provide a consolidated, simplified and updated legislative framework for future planning

The proposal is considered to be consistent with the relevant objectives of the SREP as outlined below:

- The site is a developed parcel of land, that is setback some 100m from the foreshore. Proposal involves alterations and additions to an existing building and is supported by a suitably designed stormwater management system prepared by ITM Design Consulting Hydraulic Engineers (Refer to Attachment 7) and does not increase the impervious areas on site. In this regard the proposal will not adversely impact on the hydrological and ecological health of the catchment.
- The proposal sits within the footprint of the existing dwelling house and is consistent with the building height of the approved No. DA 2018/0639. The proposal maintains the siting and orientation of the existing development and is consistent with the scale of the approval and surrounding development. On this basis, it is considered that the proposal will not detract from scenic quality of the foreshore.
- The proposal does not impact on the prosperity of the working harbour or watercraft transport functions of the harbour.
- The existing site is a private residential property and does not provide public access to, or use of, the foreshore or waterway, and the proposed development maintains the status quo.
- The proposal will not adversely impact on the water course, wetlands or riparian lands within the catchment. This is supported by the Terrestrial Biodiversity Report prepared by GIS Environmental Consultants.

4.5.2 Foreshore and Waterways

The site is identified as being within the Foreshores and Waterways Area under Clause 14 of the SREP and is subject to the matters for consideration set out in Division 2. The matters that are relevant to the proposal are addressed below.

Biodiversity, ecology and environment protection (Clause 21)

The proposal will not affect the biodiversity or ecology of the area as outlined below:

- · The is no significant vegetation on the site or proposed to be removed as a result of the proposal;
- The proposal does not involve any work within the waterway and is not within the vicinity of any wetlands:
- While the site is located within an area that is a known habitat for the Little Penguin Endangered
 Population at Manly and within the vicinity of the Long-Nosed Bandicoot Endangered Population at
 North Head, the proposal will not affect the biodiversity or ecology of the area (refer to Terrestrial
 Biodiversity Report prepared by GIS at Attachment 10); and
- The proposed development is supported by a suitably designed stormwater management system prepared by ITM Design Consulting Hydraulic Engineers (Attachment 7) and sufficient landscaped area that will contribute to the protection and enhance the hydrological and ecological health of the catchment.

Public access to, and use of, foreshores and waterways (Clause 22)

The existing site is a private residential property and does not provide public access to, or use of, the foreshore or waterway, and the proposed development maintains the status quo.

Maintenance of a working harbour (Clause 23)

The existing site has historically been used for residential purposes and the proposal provides for the development and continued use of the site for this purpose. The proposal does not impact on the preservation of the working harbour as it is not located within a part of the harbour that is characterised by 'working' uses.

Interrelationship of waterway and foreshore uses (Clause 24)

The proposal relates to an existing residential property that is adjoined by other residential development and does not involve any works within the waterway. The proposal maintains the existing residential use and functions, and in this regard will not impact on the use of the waterway by others, including water dependent uses.

Foreshore and waterways scenic quality (Clause 25)

The scale, form, design, and siting of the proposal is consistent with existing development on site and the surrounding development. In this regard the proposal will not have a detrimental impact on the scenic quality of the foreshore and waterway. Importantly, the height, bulk and footprint of the proposal is consistent with the approved DA No. 2018/0639.

Furthermore, the proposal does not negatively impact on the existing foreshore noting that it does not alter the existing rock face/natural rock outcrops or any other nearby geological features.

Maintenance, protection and enhancement of views (Clause 26)

The proposal will not adversely impact views, either to or from the harbour, from public places.

The proposal maintains the approved height and roof form of DA2018/0639 to mitigate any further impacts on views.

A comprehensive view impact assessment was undertaken for DA2018/0639 in accordance with planning principle established by the NSW Land and Environment Court Case of $Tenacity\ Consulting\ Pty\ Ltd\ v$

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Warringah [2004] NSWLEC140 and Section 3.4.3 of MDCP. Council concluded that DA2018/0639 did not cause unreasonable view loss to and from public spaces or private properties.

Further discussion of views impacts is provided in Section 5.2.3.

Boat storage facilities (Clause 27)

The proposal maintains an existing boat storage facility located below the accommodation levels of the existing dwelling. As the proposal does not involve the construction of any new boat storage facilities, it does not contravene the considerations under Clause 27.

For the above reasons, the proposed development is considered to meet the principles and be consistent with the objectives of the SREP.

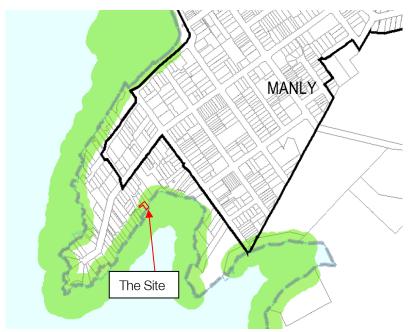
4.5.3 Consultation Requirements

In accordance with Subclause 29(1) where development within the Foreshores and Waterways involves works listed in Schedule 2 of the SREP, Council is required to refer the application to the Foreshores and Waterways Development Advisory Committee, and take into account any submissions received by the Committee within 30 days.

The proposal involves substantial demolition and rebuilding of the existing dwelling house located at 7 Bruce Avenue, Manly ('the site'), including an additional storey. It also includes replacing existing walls and constructing new walls associated with terraced garden beds along the north-eastern side boundary). On this basis it is considered that the proposal will require referral to the Waterways Development Advisory Committee. Notwithstanding it is noted that the proposal is largely consistent with approved DA 2018/0639, which was previously referred to the Committee.

4.5.4 Wetlands Protection – Matters for Consideration (Clause 63)

The whole of the site is located within the area marked as 'Wetlands Protection Area' on the SREP 2005 Wetlands Protection Area Map (refer to Figure 16).



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Figure 16: Extract of SREP 2005 Wetlands Protection Area Map

Clause 63 of the SREP requires the Council to take into consideration certain matters, for development within wetland protection areas, prior to granting consent to development under Part 4.15 of the *EP&A Act 1979*. The matters for consideration are addressed in Table 3:

Comment **Matter for Consideration** (a) the development should have a neutral or beneficial Suitable sediment and erosion control effect on the quality of water entering the waterways, measures will be implemented to ensure that the development will have neutral impact on the (b) the environmental effects of the development, quality of water entering the waterways including effects on: accompany the DA at Attachment 7. (i) the growth of native plant communities, (ii) the survival of native wildlife populations, A Terrestrial Biodiversity Report has been prepared by GIS Environmental Consultants (iii) the provision and quality of habitats for both (Attachment 10) that sets out that the proposal indigenous and migratory species, does not result in an unacceptable impact upon (iv) the surface and groundwater characteristics of the the natural environment. site on which the development is proposed to be carried out and of the surrounding areas, including The report by GIS also recommends salinity and water quality and whether the wetland ameliorative conditions that should be included ecosystems are groundwater dependent, in any forthcoming development consent. (c) whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment. (d) whether carrying out the development would be consistent with the principles set out in The NSW Wetlands Management Policy (as published in March 1996 by the then Department of Land and Water Conservation). (e) whether the development adequately preserves and The proposed development does not result in enhances local native vegetation, the removal of any existing trees. Furthermore, the proposal does not alter any nearby bushland environs or involve the removal of significant native vegetation. As detailed in the accompanying concept (f) whether the development application adequately stormwater plans and sediment and erosion demonstrates: controls plan (refer to Attachment 7), (i) how the direct and indirect impacts of the appropriate on-site measures, as are proposed development will preserve and enhance wetlands, to ensure acceptable impacts upon the natural environment, including water quality. (ii) how the development will preserve and enhance the continuity and integrity of the wetlands, and As noted previously, the proposed development (iii) how soil erosion and siltation will be minimised does not result in the removal of any existing both while the development is being carried out trees or significant native vegetation. and after it is completed, and (iv) how appropriate on-site measures are to be

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implemented to ensure that the intertidal zone is kept free from pollutants arising from the

(v) that the nutrient levels in the wetlands do not increase as a consequence of the development,

development, and

and

Matter for Consideration	Comment
(vi) that stands of vegetation (both terrestrial and aquatic) are protected or rehabilitated, and	
(vii) that the development minimises physical damage to aquatic ecological communities, and	
(viii) that the development does not cause physical damage to aquatic ecological communities,	
(g) whether conditions should be imposed on the carrying out of the development requiring the carrying out of works to preserve or enhance the value of any	Appropriate conditions of consent to support the proposed ameliorative measures outlined in the subject DA may be appropriate, as

Table 3: Clause 63 Matters for Consideration, Wetlands Protection, SREP 2005

surrounding wetlands.

4.6 State Environmental Planning Policy (Building Sustainability Index: BASIX) (BASIX SEPP) 2004

determined by Council.

This SEPP operates in conjunction with EP&A Regulation 2000 to ensure the effective introduction of BASIX in NSW.

In accordance with Clause 6(1) of the SEPP, BASIX applies to BASIX affected development as defined by the Regulation. The proposed development is defined as a BASIX affected development as it involves construction activities with a value over \$50,000.

A BASIX Certificate and BASIX stamped drawings have been prepared for the proposed development and demonstrates that the building satisfies the requirements of the BASIX SEPP (refer to Attachment 11).

4.7 Manly Local Environmental Plan 2013

4.7.1 Land Use and Permissibility

The site is located within the E4 Environmental Living zone under MLEP 2013 as illustrated in the extract of the Land Zoning Map in Figure 17.

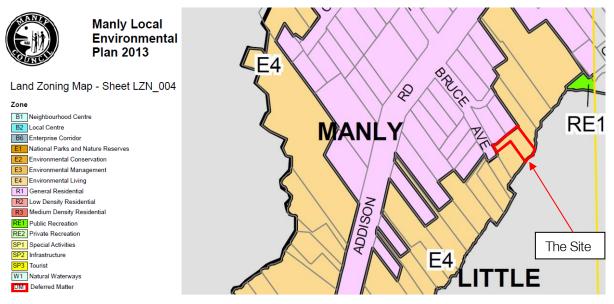


Figure 17: Extract of MLEP 2013 Zoning Map

Dwelling houses are permissible with consent within the E4 Environmental Living zone. This includes any works associated with the dwelling house. Accordingly, the proposal is permissible.

The proposed development is also consistent with the objectives of the E4 Environmental Living zone as detailed in Table 4.

Objective	Comment
To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.	The maintains the existing setback to foreshore, does not alter the existing rock shelf and primarily sits within the footprint of the existing dwelling.
	While the proposal incorporates an additional level comparative to the existing dwelling, the scale is commensurate with the adjoining and surrounding development and does not dominate the foreshore. Importantly, the proposal is consistent with the scale of the approved DA2018/0639, which was determined to have an acceptable on the aesthetic valued of the foreshore.
	The implementation of appropriate stormwater management measures as outlined the Stormwater Management Plan prepared by ITM (Attachment 7) will mitigate impacts on the water quality of the harbour.
	As outlined in the Terrestrial Biodiversity Report (Attachment 10) the proposal will not have unacceptable ecological impacts, subject to the implementation of recommended construction management measures.
To ensure that residential development does not have an adverse effect on those values.	The proposal does not adversely impact on the ecological, scientific or aesthetic values of the area.
To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.	The proposal does not result in the removal of existing canopy trees and does not dominate the natural scenic qualities of the harbour.
To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.	The proposal does not negatively impact on the foreshore. It does not alter the existing rock face site or other nearby geological features. The proposal does not alter nearby bushland environs or involve the removal of significant vegetation.
To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.	The proposal does not involve works within the existing foreshore. Potential impacts on the ecological values and water quality of foreshore and harbour will be mitigated through the implementation of the stormwater management measures detailed in the Stormwater Management Plan prepared by ITM Design Consulting Hydraulic Engineers included at Attachment 7.
To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.	The proposed development responds to the topography of the site by locating the additional level to the rear of the existing dwelling house, within a sloping roof form. As a result, the overall height of the proposal

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Objective	Comment
	is at RL14.94m and is comparative to the maximum RL13.97m of the existing dwelling on site and sits below the ridge height of the adjacent dwellings.

Table 4: E4 Environmental Living Zone Objectives Assessment Table

4.7.2 Height of Buildings (Clause 4.3)

Clause 4.3 of MLEP 2013 establishes an 8.5m maximum building height for the site, as illustrated in the extract of the Height of Buildings Map included in Figure 18.

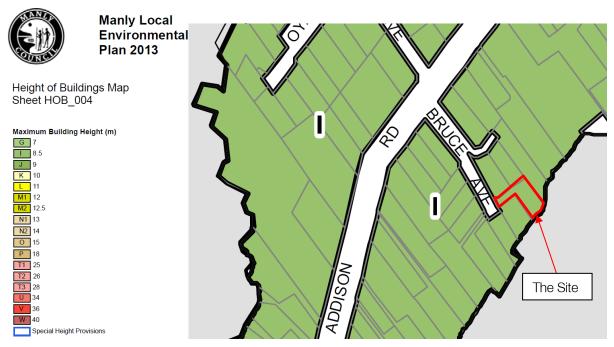


Figure 18: Extract of MLEP 2013 Height of Buildings Map

The proposal exceeds the 8.5m maximum building height standard as outlined in Table 5 below. The table also illustrates the existing building on site currently exceeds the height standard. The existing and proposed variations in the building height at the nominated points are graphically illustrated in Figure 19. The existing non-compliances are denoted in red and the proposed non-compliances are denoted in blue.

Building Height Control	Existing Heights	Existing non- compliance	Proposed Heights	Proposed non- compliance	Proposed increase in existing non-compliance
8.5m	A. Ridge: 11.45m (max) RL13.97m)	Ridge: 2.950m (max. non- compliance = 35%)	C. Roof slope:11.635m (max. proposed height)	3.135m (Max. non- compliance = 37%)	0.185m (2%)
			D. Roof slope: 8.595m	0.095m (1%)	
	B. Roof flat: 8.858m	Roof flat: 0.358m (4%)	E. Roof/terrace flat: 8.595m	0.095m (1%)	

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F. Terrace balustrade: 9.645m	1.415m (Max. non-compliance = 17%)
G: Wall: 9.075m	

Table 5: Non-compliances with the building and wall height standards

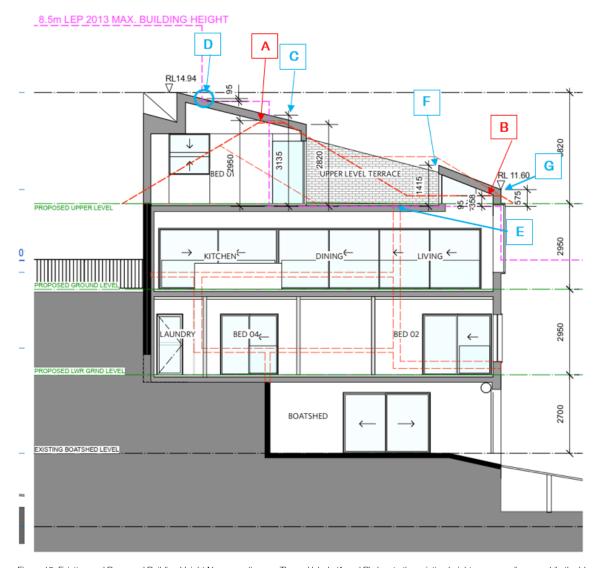


Figure 19: Existing and Proposed Building Height Non-compliances. The red labels (A and B) denote the existing height non-compliances while the blue denotes the proposed height non-compliances

A variation to the building height standard is sought in accordance with Clause 4.6 - Exceptions to Development Standards of MLEP 2013, and is included at Attachment 12. The Clause 4.6 application demonstrates that the variation is justified and that compliance with the standard is unreasonable and unnecessary in the circumstances of the case, as summarised below:

- The existing dwelling currently exceeds the height controls, which is largely attributed to the steep slope of the site. As the proposal maintains the footprint and siting of the existing dwelling and elements of the structure, and the steep site topography, it also exceeds the height controls.
- The proposal results in a marginal increase in the existing maximum height variation by 0.185m, or 2%. However, the proposal does not exceed the building height applying under the development consent to DA2018/0639 issued on 18 December 2019.

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- The height, scale and bulk of the proposal is consistent with the surrounding development and nearby dwellings fronting the foreshore. At the highest point the proposal has an RL of 14.94m, comparative to the existing dwelling which has an RL 13.97m. Importantly, the overall (ridge) height of the proposal sits below the ridge height of the adjacent dwellings. The proposal maintains appropriate scale relationships so that built form outcomes are compatible with surrounding development.
- The proposal locates the additional storey towards the rear of the existing dwelling on the higher parts of the site. Consequently, while the maximum RL14.94m of the proposal is higher than the maximum RL13.97m of the existing dwelling, the part of the proposal at RL14.94m is within the height control (Refer to Figure 19).
- The proposal does not have unreasonable amenity impacts on adjoining properties by way of overshadowing, visual and view impacts, or loss or privacy. Importantly, as the proposal maintains the building height of the approved DA2018/0639, it does not result in additional overshadowing or view loss impacts from what was previously assessed and determined to be acceptable.
- The height non-compliance does not adversely impact on the character or landscape setting of the harbour or foreshore. Removing the non-compliance would not significantly alter the perceived height and bulk of the building as viewed from the harbour and foreshore, or from surrounding development.
- · The proposal complies with the FSR standard applying to the site.
- The proposal remains consistent with the objectives of the building height standard and the objectives of the E4 Environmental Living zone, despite the non-compliances.

Having regard to the above, and the Clause 4.6 - Exceptions to Development Standards of MLEP 2013 included at Attachment 12, the variation to the height standard is considered acceptable.

4.7.3 Floor Space Ratio (Clause 4.4)

Clause 4.4 of MLEP 2013 specifies a maximum floor space ratio (FSR) of 0.6:1 as being applicable to the site, as illustrated in the extract of the Floor Space Ratio Map included in Figure 20.

The proposal complies with the FSR standard with a gross floor area (GFA) of 234m², which equates to an FSR of 0.54:1.



Figure 20: Extract of MLEP 2013 Floor Space Ratio Map

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4.7.4 Development below mean high water mark (Clause 5.7)

The proposal does not involve any works below the mean high water mark.

4.7.5 Heritage Conservation (Clause 5.10)

The site is not a listed item of heritage within Schedule 5 of the MLEP 2013, nor is it within an identified conservation area. However, the site is directly adjacent to a Local Heritage item identified as I1 "Harbour foreshores-Manly municipal area boundary adjacent to the Harbour" under the MLEP 2013, as shown in Figure 21 below.

It is noted that all the harbour foreshores within Manly and the suburbs within the former Manly Council, are listed as a landscape heritage item.

The proposal does not adversely impact on the visual qualities of the harbour foreshore. The proposal has been designed to enhance the appearance of the existing dwelling within the foreshore setting. Furthermore, the proposal does not adversely impact on the ecological values or natural environment of the foreshore as detailed in the Terrestrial Biodiversity Report prepared by GIS Environmental Consultants (Attachment 10).

Having regard to the above the proposal does not have any adverse impacts on the heritage significance of the foreshore.

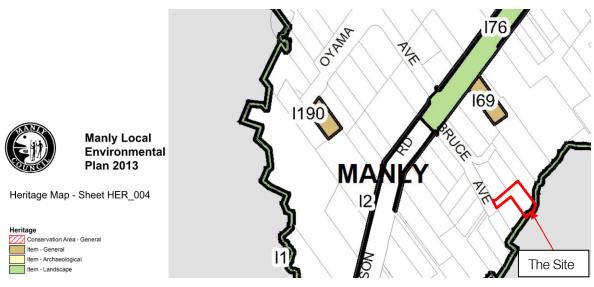


Figure 21: Extract of MLEP 2013 Heritage Map

4.7.6 Acid Sulfate Soils (Clause 6.1)

Clause 6.1 seeks to minimise the impacts of Acid Sulfate Soils to the environment. Classes of acid sulphate soils have been applied to land throughout the LGA and mapped on the Acid Sulfate Soils Map.

The site is not located within the acid sulfate soils classes mapped on the Acid Sulfate Soils map.

On this basis, the proposal is unlikely to result in environmental damage arising from the disturbance, draining or exposure of acid sulfate soils and no further assessment of this matter is required.

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4.7.7 Earthworks (Clause 6.2)

Clause 6.2 requires consent for earthworks and identifies matters for consideration to ensure development involving earthworks will not have a detrimental impact on environmental functions and processes, neighbouring development, heritage, or features of surrounding land.

The proposal requires excavation to accommodate the new internal stair and lift connecting to the boatshed to the rest of the house and to an area directly below the existing dwelling to accommodate the lowered floor levels. Other minor excavation will be required in association with the landscaping and replacement of the site access stairs.

The proposed excavation is illustrated in the Excavation Plan included in the Architectural Package at Attachment 4.

The excavation to accommodate the new stair and lift connecting to the boatshed will be up to a depth of around 2.5m but occupies a relatively small area. The excavation required to accommodate lowered floor level will limited to depth of around 1m. It is important to note, that following approval of DA2018/0639, further on-site investigations revealed existing subsurface floor space adjoining the boatshed (Refer to Figure 22). These existing spaces reduce the extent of excavation required to lower the floor levels.

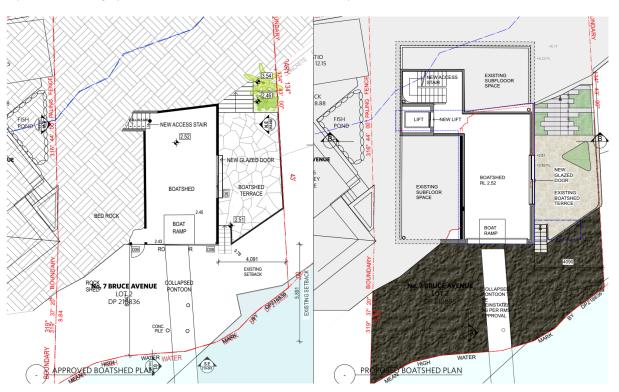


Figure 22: Approved and proposed boatshed level. The existing subfloor space is visible in the floor plan on the right.

As the excavation will occur within the existing footprint of the existing building, it will not have a discernible impact on the existing topography or features of the site, including the existing rock face.

A Geotechnical Assessment prepared by JK Geotechnics (refer to Attachment 8) provides a geotechnical investigation of the site and proposal. The report assesses and makes recommendations with regard to slope stability, excavation conditions, excavation support, retention and footings.

On this basis, it is considered that the proposal will not adversely impact on environmental processes, heritage significance or features of the surrounding land or neighbouring development and is consistent with Clause 6.2.

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4.7.8 Stormwater Management (Clause 6.4)

Clause 6.4 seeks to minimise impacts on urban stormwater on adjoining properties and receiving waters. The proposal is supported by a Stormwater Management Plan prepared by ITM Design Consulting Hydraulic Engineers (refer Attachment 7) which identifies the stormwater disposal and management for the site and is considered to satisfy the provisions of this clause.

4.7.9 Terrestrial Biodiversity (Clause 6.5)

The site is identified as being within a 'Biodiversity' area as illustrated on the extract of the Terrestrial Biodiversity Map included in Figure 23.

Clause 6.5 seeks to maintain terrestrial biodiversity by

- "(a) protecting native fauna and flora, and
- (b) protecting the ecological processes necessary for their continued existence, and
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats"

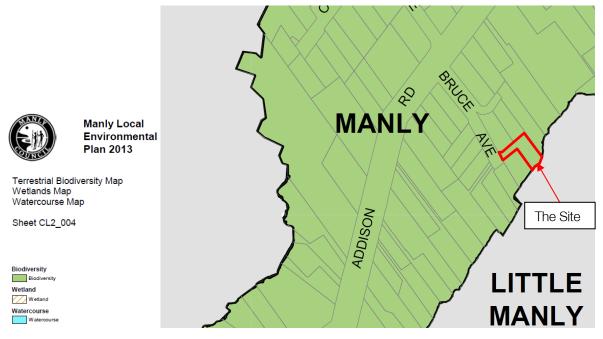


Figure 23: Extract of MLEP 2013 Terrestrial Biodiversity Map

The site located within an area that is a known habitat for the Little Penguin Endangered Population at Manly and within the vicinity of the Long-Nosed Bandicoot Endangered Population at North Head.

Subclauses 6.5(3) and 6.5(4) sets out the matters that must be considered in regard to the proposal given the sites location within Biodiversity area.

Terrestrial Biodiversity Report prepared by GIS Environmental Consultants (Attachment 10) provides an assessment of the proposal against subclauses 6.5(3) and 6.5(4) which is reproduced in part below.

(3) (a) Whether the development is likely to have:

i. Any adverse impact on the condition, ecological value and significance of the fauna and flora on the land?

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Response: The site survey found no evidence of the Long-nosed Bandicoot site and adjacent land. It is likely that bandicoots use the adjacent residential properties and nearby bushland areas including Little Manly Point Park for foraging and probably resting and breeding, and they have been recorded regularly in the locality.

Other fauna that are likely to use Little Manly Beach reserve include possums, Rainbow Lorikeets, Noisy Minors, Sulphur Crested Cockatoo, Garden Skinks, Eastern Water Dragon and Brush turkeys, Crested Pigeon. Eastern Water Dragons and a Diamond Python skin were observed on the site during the survey.

The Site contains low value habitat for Little Penguins due to lack of dense vegetation or rocky areas. The proposal will gain $10m^2$ of vegetation that is foraging habitat for Long-nosed Bandicoots and low value habitat for other native species including the Little Penguin.

Access to the habitat will not change for all species that potentially use the Site.

No evidence was found of any other Threatened Species, Populations or Endangered Ecological Communities utilising this property.

Based on the information gathered and the assessments of potential impacts of the proposal on flora and fauna, it is considered that the proposal will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land.

ii. Any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna?

Response: The vegetation on the site is low quality habitat for a wide range of fauna including reptiles, birds and mammals. Brush-tailed and Ring-tailed Possums are likely to occur. There is no native vegetation community on the property. The proposal will temporarily remove mostly planted garden species or weeds which provide some foraging habitat to native species including the Long-nosed Bandicoot.

Based on the findings and assessment of the impact of this proposal on flora and fauna in sections 3 and 4 of this report, fauna habitat is not likely to be adversely impacted by the proposal and the habitat is not likely to be important habitat for these species due to the higher quality bushland habitat to the east in Sydney Harbour National Park. The proposed development will not have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna.

It is recommended that local native species be used in landscaping on the property to improve that habitat value of the vegetation to native fauna.

iii. Any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land?

Response: Based on the findings and assessment of the impact of this proposal on flora and fauna ..., the proposed development will not significantly fragment, disturb or diminish the current biodiversity structure, function and composition of the subject site.

iv. Any adverse impact on the habitat elements providing connectivity on the land?

Response: The site is located in a residential area surrounded by other private properties with a discontiguous canopy of trees. Recommendations are made to allow and maintain bandicoot and penguin access, so as to not reduce connectivity between the site and neighbouring properties. The site is not part of an important wildlife corridor. This proposal will further impact on the habitat elements providing connectivity to other areas of suitable habitat. Access to the habitat for bandicoots and penguins ..will not be changed by the proposal.

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Based on the findings and assessment of the impact of this proposal on flora and fauna, this proposal will not adversely impact on the habitat elements providing connectivity to other areas of suitable habitat.

b) Are there appropriate measures proposed to avoid, minimise or mitigate the impacts of the development?

<u>Response</u>: The report makes recommendations for appropriate measures to avoid, minimise or mitigate the impacts of the development.

- 4(a) Is the development designed, sited and will be managed to avoid any significant adverse environmental impact? or
 - (b) If the impact cannot be reasonably avoided by adopting feasible alternatives— is the development designed, sited and will be managed to minimise that impact?
 - (c) If that impact cannot be minimised—will the development will be managed to mitigate that impact?

Response: The development has been designed utilise mostly existing disturbed and concrete areas. The proposal will retain access for movement of bandicoot species. The recommendations and ameliorative conditions provide measures to manage and mitigate impacts.

Having regard to the above the Terrestrial Biodiversity Report concludes that the proposal is consistent with the requirements of Clause 6.5 and is considered not to have a significant adverse impact on terrestrial biodiversity.

4.7.10 Landslide risk (Clause 6.8)

The site is identified as being within area G2 on the Landslide Risk Map. Clause 6.8 seeks to avoid, minimise or mitigate the impacts and risks of land slide arising from development.

A Geotechnical Assessment has been prepared by JK Geotechnics (Refer to Attachment 8). The assessment provides recommendations for excavation and construction to minimise the risks of instability to the site and adjacent sites.

On this basis, the proposal is considered to satisfy the provisions of Clause 6.8.

4.7.11 Foreshore Scenic Protection Area (Clause 6.9)

The site is located within a Scenic Protection Area as identified on the extract of Scenic Protection Area Map at Figure 24.

Clause 6.9 seeks to protect the visual aesthetic amenity and views to and from the harbour. Clause 6.9(3) requires consideration of the following which are relevant to the proposal:

- The impacts on the visual amenity of the harbour, overshadowing of foreshore and views loss from a public place to the foreshore; and
- The suitability of the development its type, location and design and its relationship with and impact on the foreshore.

The proposal is consistent with the provisions of Clause 6.9 as:

- It provides for a modest increase in scale, comparative to the scale of the existing dwelling, and responds to the topography of the site;
- · The scale of the proposal is consistent with the scale of the surrounding development;
- · Additional overshadowing to the foreshore is not significant; and

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· It does reduce public views to the foreshore.

Furthermore, the height and bulk of the proposal is consistent the approved DA 2018/0639, which was determined to be acceptable in relation to the visual aesthetic amenity of the harbour and foreshore.

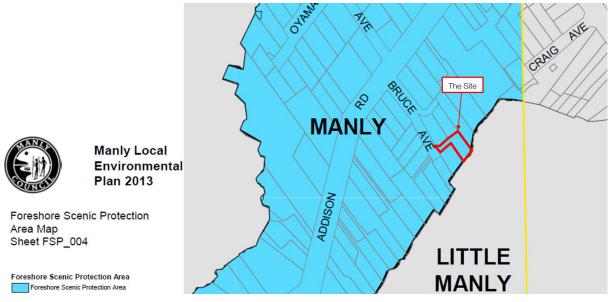


Figure 24: Extract of MLEP 2013 Foreshore Scenic Protection Area Map

4.7.12 Limited development on foreshore area (6.10)

A large part of the site is located within the Foreshore Area, below the Foreshore Building Line (FBL) as illustrated in the extract from the FBL Map included at Figure 25. The existing dwelling and majority of the proposed works sit within Foreshore Area as indicated on the architectural plans prepared by Durbach Block Jaggers Architects at Attachment 4.

Clause 6.10 contains objectives and restricts development that can occur within Foreshore Area in order to protect the natural foreshore processes, significance and amenity of the foreshore.

- (2) Development consent must not be granted to development on land in the foreshore area except for the following purposes—
- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

In accordance with Subclause 6.10(2)(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area can be constructed with the Foreshore Area with development consent. The proposal is for substantial demolition and rebuilding of the existing dwelling house and associated additions and is consistent with this clause and is permitted within the foreshore area.

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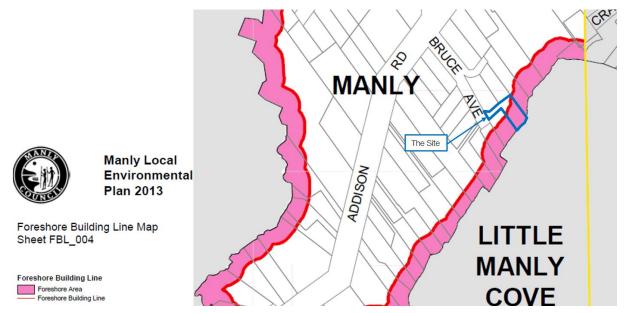


Figure 25: Extract of MLEP 2013 Foreshore Building Line Map

Subclause 6.10(1) sets out the objectives of this Clause and Subclause 6.10(3) identifies those matters that must be satisfied in granting consent to works within the Foreshore Area. The proposal satisfies the relevant objectives and considerations outlined in 6.10.1(1) and 6.10(3) as outlined below:

- The proposal is consistent with the objectives of E4 Environmental Living zone as outlined in Section 4.7.1;
- The bulk and scale and general appearance of the proposal is compatible with surrounding residential development. The architectural style of the proposal is not out of character with the diverse architecture that characterises the residential development along the foreshore;
- The proposal will not impact on the natural foreshore processes or cause environmental harm. The proposal is supported by a drainage concept plan to ensure stormwater runoff from the development does not cause pollution or siltation of the harbour, or have an adverse effect on drainage patterns or flora and fauna habitats:
- · The proposal will not generate congestion or cause conflict between people using open spaces areas of the waterway;
- The works do not compromise opportunities for public access along the foreshore that may be available within the vicinity of the site, given such opportunities are not available on the site or nearby sites;
- The works do not adversely impact on any architectural, aesthetic, heritage or natural significance that may be present on the site; and
- The proposal will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposal will enhance the appearance of the existing dwelling.

4.8 Manly Development Control Plan 2013

MDCP 2013 contains detailed guidelines and controls for development, which supplement the development standards and provisions contained in MLEP 2013.

An assessment of the proposal against the following relevant provisions of MDCP 2013 is provided below:

- Section 3 General Principles of Development
- Section 4 Development Controls and Development Types
 - 4.1 Residential Development Controls

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- 4.4 Other Development
 - i. 4.4.1 Demolition
 - ii. 4.4.5 Earthworks (Excavation & Filling)
- · Section 5 Special Character Areas and Sites
 - 5.4 Environmentally Sensitive Lands
 - i. 5.4.1 Foreshore Scenic Protection Area
 - ii. Threatened Species and Critical Habitat Lands

4.8.1 General Principles of Development (Section 3)

Streetscapes and Townscapes (Residential Areas 3.11)

The principles within this section seek to ensure development responds to the predominant streetscape qualities.

The site is a battle-axe block with an existing garage fronting the street. The proposal does not involve any changes to the street elevation of the existing garage. In this regard, the proposal does not alter the existing streetscape character of Bruce Avenue.

Heritage Considerations (3.2)

As detailed in the assessment of Clause 5.10 of the MLEP in section 4.5.6, the site is adjacent to the harbour foreshore, which is listed as a landscape heritage item. All the harbour foreshores within Manly and the suburbs within the former Manly Council, are listed as a landscape heritage item.

It is noted that principles contained in Section 3.2.1 primarily focus on built heritage and do not address landscape heritage elements.

The proposal does not alter the foreshore, which is to be retained in its existing form and in this regard will not adversely impact on the heritage significance of the foreshore. The proposal has been designed to enhance the appearance of the existing dwelling within the foreshore setting. Furthermore, the proposal does not adversely impact on the ecological values or natural environment of the foreshore as detailed in the Terrestrial Biodiversity Report prepared by GIS Environmental Consultants (Attachment 10).

Having regard to the above the proposal does not have any adverse impacts on the heritage significance of the foreshore.

Landscaping (3.3)

Landscaping Design (3.3.1)

The proposal is consistent with the principles for landscape character as:

- The amount of existing open space and landscaped area on site is not reduced;
- It does not involve the removal of significant vegetation. New vegetation areas will be provided along the north-eastern boundary; and
- Consistent with the recommendations of the Terrestrial Biodiversity Report included at Attachment 10, the landscape design is to include native plant species to provide new and/or improved low dense clumping habitat to provide for potential foraging and nesting for the long-nosed bandicoot and penguins.

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Preservation of Trees and Bushland (3.3.2)

The proposal does not involve the removal of trees or significant vegetation that requires approval. An existing garden bed in the northern part of the property is to be removed and a new garden bed is proposed.

As assessment of the potential impact of the removal of the garden bed on the Little Penguin and Longnosed Bandicoot habitats and recommendations for new landscaping, is provided in the Terrestrial Biodiversity Report included at Attachment 10.

Amenity (3.4)

Sunlight Access and Overshadowing (3.4.1)

Sections 3.4.1.1 and 3.4.1.2 require the following in relation to overshadowing of the private open space and windows of adjacent properties:

- Development must not eliminate more than one third of existing sunlight to private open space between 9:00am and 3:00pm at midwinter, 21 June;
- For adjacent buildings with an east-west orientation, the solar access is to be maintained to living room windows for at least two (2) hours between 9:00am and 3:00pm; and
- · No reduction in solar access is permitted to any existing windows which receive less than the minimum specified hours.

Shadow diagrams, including view from sun eye analysis, have been prepared by Durbach Block Jaggers Architects (refer to Attachment 4). As a result of the topography, the location of adjacent properties and the orientation of the subject site, 9 Bruce Avenue is the only neighbouring property that is potentially overshadowed by the proposal.

The height and bulk of the proposal is consistent with the approved DA 2018/0639 and does not result in additional overshadowing to 9 Bruce Avenue from what was previously determined to be acceptable. Notwithstanding an assessment of the overshadowing impacts of 9 Bruce Avenue is provided below.

Most of the private open space of 9 Bruce Avenue is orientated towards the harbour to the south-east and south to maximise views and consequently it overshadowed by the house itself. At 9:00am there will be some minor additional overshadowing to the lower (eastern) patio of 9 Bruce Avenue, which is orientated to the harbour. This is considered acceptable given that the siting and layout of the open space at 9:00am maximises views of the harbour in lieu of maximising sunlight in midwinter. Significant amenity afforded by the expansive harbour views available from private open space offsets the limited midwinter sunlight to these areas.

There is an upper level patio at No. 9, to the rear of the existing garage, which receives some sunlight during mid-winter. The proposal has negligible overshadowing to the patio.

The proposal does not result in additional overshadowing to the existing windows of 9 Bruce Avenue. It is noted that the proposed roof form is consistent with the approved roof under DA 2018/0639. The approved roof was the outcome of the amendments required under the deferred commencement consent to alter the roof and envelope of the upper level to avoid overshadowing of the windows of No. 9 Bruce Avenue.

Having regard to the above the proposal is consistent with the principles of the MDCP relating to overshadowing.

Privacy and Security (3.4.2)

The proposal seeks to maximise privacy for the subject dwelling and maintain the privacy to the adjoining dwellings and is consistent with the provisions of 3.4.2 as outlined below.

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Window design and orientation (3.4.2.1)

The proposal largely maintains the existing principal orientation of the living and bedrooms windows towards the harbour to the east and Little Manly Beach to the north-east to minimise direct views into and overlooking of the adjoining properties.

As illustrated in Figures 26, 27 and 28, while the floor level have been lowered, the size and location of the proposed windows closely aligns with the approved DA 2018/0639 to avoid the potential for additional privacy impacts from what was previously determined as acceptable. It is noted that south-west elevation facing No. 9 Bruce Avenue has fewer windows than the approved DA.



Figure 26: Comparison of approved and proposed windows on North-Eastern elevation adjoining No. 1 Bruce Avenue

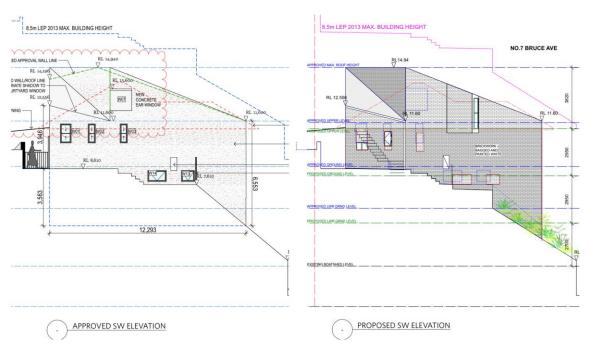


Figure 27: Comparison of approved and proposed windows on North-Eastern elevation adjoining 9 Bruce Avenue

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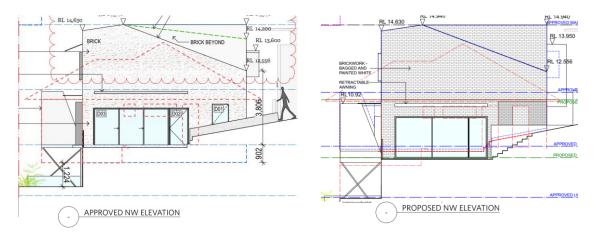


Figure 28: Comparison of approved and proposed windows on North-Western (rear) elevation

Balconies and Terraces (3.4.2.2)

The size, location and orientation of the balconies are consistent with the approved DA2018/0639, although they are slightly lower to correspond with the lowered floor level. In this regard the proposal does not give rise to greater privacy impacts from the balconies than was previously determined to be acceptable.

The proposal maintains the existing lower boatshed terrace fronting the foreshore which faces the harbour and does not overlook the adjoining properties.

A bedroom balcony is proposed on the lower ground level. It is located on the foreshore (southern) edge of the north-eastern elevation. The balcony projects to maximise views towards Manly Cove and Little Manly Beach to the east. As illustrated in the photomontage in Figure 29, the orientation, location and angle of the balcony minimises impacts on the privacy of the adjoining development at 1 Bruce Avenue. Furthermore, the size and location of the balcony off a bedroom will limit its usability and potential privacy impacts.

A new living room balcony is proposed on the north-eastern of the ground level. This balcony is in the same location as the existing sunroom and bedroom. The ends of the balcony are solid to avoid directs views to the residential apartments to the west at 3 Bruce Avenue and 1 Bruce Avenue to the north-west. The balcony is orientated towards Little Manly Beach. This balcony is also visible in Figure 29. The is adjacent to the concrete slab and heavily vegetated setback of 1 Bruce Avenue thereby avoiding opportunities for direct views to the residence.



Figure 29: Photomontage of proposed development – aerial/harbour view

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The upper ground level master bedroom addition, incorporates a terrace, which has been designed to limit overlooking of adjacent properties and maintain privacy. The terrace is enclosed with sloping walls that form part of the roof structure to eliminate direct views to adjacent properties.

Having regard to the above the proposals mitigate direct views to the windows and private open space of the adjacent dwellings and is consistent with the provisions of section 3.4.2 of the MDCP 2013.

Maintenance of Views (3.4.3)

The proposal maintains the approved height and roof form of DA2018/0639 to mitigate any further impacts on views.

A comprehensive view impact assessment was undertaken for DA2018/0639 in accordance with planning principle established by the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah [2004] NSWLEC140* and Section 3.4.3 of MDCP. Council concluded that DA2018/0639 did not cause unreasonable view loss to and from public spaces or private properties.

The proposal is consistent with the height and bulk of the approved DA2018/0639, which was previously determined to have an acceptable impact on views, while providing for view sharing, it is considered to satisfy Section 3.4.3 of the MDCP.

Further discussion of views impacts is provided in Section 5.2.3.

Sustainability (3.5)

The proposal is consistent with the provisions relating to sustainability as is supported by a BASIX certificate and stamped plans (refer to Attachment 11).

Stormwater Management (3.7)

The proposal is supported by a Stormwater Management Plan prepared by ITM Design (refer to Attachment 7) which identifies the stormwater disposal and management for the site and is considered to satisfy the provisions of Section 3.7.

Waste Management (3.8)

A screened bin storage area is located at the rear of the existing garage and will not be visible from the street or any adjoining properties as illustrated on the architectural plans (Attachment 4). Existing waste collection arrangements will be maintained.

A Waste Management Plan (WMP) for the demolition and construction of the development is included at Attachment 9. The WMP details the materials that will generated during demolition and construction and identifies opportunities for their reuse and recycle to minimise amount of waste for off-site disposal.

4.8.2 Development Controls and Development types (Section 4)

Residential Development Controls (Section 4.1)

Table 6 is a summary of the assessment of the development proposal against the key relevant development controls under Section 4.1 of MDCP 2013. Any non-compliances with the numerical controls are discussed at the end of the table.

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Control	Required/Permitted	Proposed	Compliance
Residential Density (4.1.1.1)	Minimum 1 dwelling per 250m ²	1 dwelling per 430m ²	Yes
Dwelling Size (4.1.1.1)	Minimum 112m ² for 4 bedrooms (plus 2 additional bathrooms)	234m ² (excluding internal stairs and lift)	Yes
Wall Height (4.1.2.1)	Maximum 8m (site gradient ≥ 1:4)	Elevation (max height):	
(7.1.6.1)	,	North-West = 6.46m	Yes
		North-East = 10.7m	No – See discussion below
		South-East = 9.08m	No – See discussion below
		South- West = 7.35m	Yes
Number of Storeys (4.1.2.2)	Maximum 2 storeys	3 storeys	No - See discussion below
Roof Height (Pitched Roof) (4.1,2.3)	Maximum 2.5m	750mm	Yes
Roof Pitch (4.1.2.3)	Maximum 35 degrees	18 degrees	Yes
Front Setback (4.1.4.1)	6.0m or prevailing / established front setback	N/A (generally a battle-axe allotment and no change to existing garage fronting Bruce Avenue)	N/A
Side Setback (4.1.4.2)	Minimum one third of the height of adjacent external wall of dwelling:		
	North-East = 2.75m - 3.53m	North - East: 3.3m – 4.091m (unenclosed balconies minimum 1.2m setback – permitted to encroach under DCP)	Yes
	South-West =1.65m - 2.23m	South-West: 1.302m – 1.551m (0.6m to 'concrete ear ensuite window' on upper level)	No
Foreshore Building Line (4.1.4.5)	As per Foreshore Building Line (FBL) Map & Clause 6.10 of MLEP 2013	Much of the site is below the FBL, however, Clause 6.10 (2) (a) allows extension, alteration or rebuilding of an existing building within this area. Refer to detailed discussion in section 4.5.13 of this report.	Yes

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Open Space	Area OS3 (Minimum)		
(4.1.5.1)	Total = 55% of site area (236.5m ²)	245m ²	Yes
	Landscape Area = min 35% of total open space (82.8m²)	51m ²	No – See discussion below
	Open Space Above Ground = max 25% of Total Open Space (59.1m²)	57m ²	Yes
Principal Private Open Space (4.1.5.3)	Minimum 18m²	111m ² - including areas marked as 'open space' and 'open space above ground' on submitted architectural drawings (Drawing No. A-DA-100-004)	Yes
Car Parking (4.1.6)	Minimum 2 spaces	1 space (existing)	No

Table 6: MDCP 2013 (Section 4) Compliance Table

Wall Height and Number of Storeys

As discussed is section 4.7.2 of this report, a variation to the building height standard in MLEP 2013 is being sought in accordance with Clause 4.6 – 'Exceptions to Development Standards', and is included at Attachment 12. The justifications provided under the Clause 4.6 application are relevant and applicable to the 'wall height' and 'number of storeys' controls exceedance under MDCP 2013. In this regard, it is noted that the DCP specifically indicates that the 'wall height' and 'number of storeys' provisions relate and support the MLEP 'Height of Building' standard and that the LEP objectives for this standard are applicable to the DCP height controls.

Therefore, having regard to the justification provided under the Clause 4.6 application accompanying this DA, the proposed exceedances to the 'wall height' and 'number of storeys' controls of the DCP are considered reasonable and acceptable for the following reasons:

- The proposal remains consistent with the objectives of the building height standard and the objectives of the E4 Environmental Living, despite the non-compliance;
- The non-compliance with the wall and storeys height controls does not give rise to unreasonable amenity impacts in relation to visual impacts, loss of views, overshadowing or privacy;
- As the site is a battle-axe block, the proposed additions are not visible from Bruce Avenue. Consequently, the non-compliance with the 'wall height' and 'number of storeys' will not adversely impact on the streetscape of Bruce Avenue;
- The existing dwelling on site is of part two (2) and part (3) storey construction. The proposal incorporates an addition storey which has been setback to the rear to ensure the dwelling will be three (3) storeys at any one point. Existing residential development on adjoining and nearby sites is predominantly of three (3) to four (4) storey construction;
- The proposal responds to the topography of the site by containing the upper level within a sloped roof form, that is setback towards the rear (north) of the existing dwelling. As a result, the overall height of the proposal at RL14.94, is only 0.97m higher than the existing dwelling at RL13.97m. Importantly, the highest part of the proposal at Rl14.94 is within the 8.5m building height standard applying under MLEP;
- · The overall height of the proposal at RL14.94 sits below the ridge height of the adjacent dwellings; and

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Removing the non-compliance would not significantly alter the perceived height of the building as viewed from the harbour and foreshore, or from surrounding development.

Side Setback

Under MDCP 2013 side setbacks must not be less than one third of the height of the adjacent external wall of the proposed dwelling.

The proposed development complies with most of the required building setbacks except for the setback to the south-west boundary. The required setback to this boundary ranges from 1.65m to 2.23m. The provided setback is 1.302m to 1.551m (0.6m to 'concrete ear window' on upper level). It is noted that the proposed setbacks are consistent with the setbacks of the approved development DA 2018/0639, with the exception of the 'ear window' which is setback 0.6m, instead of 0.7m.

The proposed non-compliance with the south-west boundary side setback is considered reasonable and acceptable as outlined below:

- · The proposal ensures amenity is maintained to adjacent properties in terms of privacy, solar access and views;
- The alignment of the existing external wall along this boundary is not changing, except for the incursion of the proposed new concrete ear window associated with bathroom on the new upper level. The design and orientation of this windows ensure it does not result in direct views into, or overlooking of, the adjoining property at 9 Bruce Avenue;
- · It does not require the removal of trees or significant vegetation on site; and
- The proposed south-west wall height complies with the MDCP 2013 control.

Open Space (Landscape Area)

The existing residential development provides a total of 48m² of landscaped open space area, which is less than the DCP requirement of 82.8m² for the site. The proposed development increases the overall open space area on-site to a compliant 245m² (compared with the existing non-compliant provision of 187m²) and increases the landscaped open space area component to 57m². It is noted that amount of landscaped area is consistent with the approved DA 2018/0639.

While the landscape area is still non-compliant, it has nonetheless increased and is has been reconfigured to achieve enhanced landscape and amenity outcomes for the site and adjoining properties.

Other Development (Section 4.4)

Demolition (4.4.1)

While the proposal involves substantial demolition of the existing dwelling, it has sought to retain existing structure of, where practical. Two (2) of the existing external walls and the boatshed will be retained.

The Existing Building Condition – Structural Adequacy advice prepared by SDA Structures (Attachment 3) identifies that the structure surrounding the existing boat shed that supports the dwelling is deteriorated and requires rectification, replacement or strengthening to ensure on going structural adequacy. While the proposal retains portions of the south-western and north-western walls, it is not feasible to retain portions of the other elevations and it will pose a safety risk during the demolition process. Consistent with SDA's recommendations, demolition and rebuilding of the other elevations is proposed.

As such, the extent of demolition proposed reflects the amount of existing structure that can be safely retained during the construction as identified by SDA, and that is sufficient to support the loads associated with the proposed works.

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Consistent with sustainable principles, demolished materials will be recycled as outlined in the Waste Management Plan (Attachment 9).

Earthworks (Excavation and Filling) (4.4.5)

As outlined in the assessment of Clause 6.2 of the MLEP, the proposal involves the following excavation:

- Excavation to accommodate the new internal stair and lift connecting to the boatshed to the house;
- Exaction directly below the existing dwelling to accommodate the lowered floor levels; and
- Excavation associated with the demolition of the stairs along the north-eastern boundary and construction of new stairs, and associated landscaping.

The controls generally restrict excavation and fill to a maximum of 1m depth. Other than the excavation required to accommodate the stairs and lift, the excavation is generally limited to a depth of 1m. The excavation for the stairs and lift will require excavation up to a maximum of around 2.5m. This is contained to small area within the footprint of the existing building.

The proposal remains consistent with the objective of the control despite the depths of excavation as it:

- · Limits change to the topography of the site;
- · Does not involve the removal of significant vegetation; and
- Does not alter the natural flow of ground and surface water.

4.8.3 Special Character Areas and Sites (Section 5)

Environmentally Sensitive Lands (Section 5.4)

Foreshore Scenic Protection Area (5.4.1)

As noted in section 4.5.12 of this report, the site is located within the Foreshore Scenic Protection Area as identified by Clause 6.9 of MLEP 2013 and its associated map (refer to Figure 23).

The proposed development does not detrimentally affect the visual or aesthetic amenity of the site in the foreshore scenic area nor does the proposal detrimentally affect the views of the site, including its natural features, as viewed from the Harbour or any other public place. Specifically, and further to the matters prescribed in the MLEP 2013, the development satisfactorily addresses the considerations for development within the Foreshore Scenic Protection Area as follows:

- · There is no significant vegetation on the site or proposed to be removed;
- · The proposal does not involve any work within the waterway or existing foreshore area;
- While the site is located within an area that is a known habitat for the Little Penguin Endangered Population at Manly and within the vicinity of the Long – Nosed Bandicoot Endangered Population at North Head, the proposal will not affect the biodiversity or ecology of the area (refer to Terrestrial Biodiversity Report prepared by GIS at Attachment 10);
- The proposal does not negatively impact on the existing foreshore noting that it does not alter the existing rock face/ natural rock outcrops or any other nearby geological features;
- The scale, form, design and siting of the development is consistent with surrounding development and will not have a detrimental impact on the scenic quality of the foreshore and waterway. In this regard, the proposal will not adversely impact views, to and from the harbour, from public places or any adjoining properties;
- The view of the existing foreshore, from the Harbour, is dominated by residential development of three (3) and four (4) storeys in height with no significant stands of vegetation or tree canopies. Whilst there is

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- The proposed building materials are of a non-reflective quality and of colours and textures that will blend with both the prevailing built and natural environments;
- Proposed building setbacks have been maximised and/or generally maintained as per existing setbacks to enable open space to continue to dominate the built form on the site particularly as viewed from the harbour; and

no predominant or established tree canopy, the proposed roofline is confined to below the roofline of

For reasons outlined above, the proposal satisfactorily minimises the contrast between the built and natural environment.

Threatened Species and Critical Habitat Lands (5.4.2)

The site located within an area that is a known habitat for the Little Penguin Endangered Population at Manly and within the vicinity of the Long - Nosed Bandicoot Endangered Population at North Head.

A Terrestrial Biodiversity Report has been prepared by GIS Environmental Consultants (Attachment 10) to assess the likely impacts of the proposed development on the terrestrial biodiversity. The report found that the development is unlikely to have a significant impact on the conservation of any Threatened Species or Endangered Ecological Community.

4.9 Sydney Harbour Foreshores and Waterways Area - Development Control Plan (SHFWA DCP) 2005

The following sections of the SHFWA DCP 2005 are relevant to the assessment of the DA:

- Section 2 Ecological Assessment;
- Section 3 Landscape Assessment; and
- Section 5 Design Guidelines for Land Based Developments

In respect to the above sections of the SHFWA DCP 2005, the following comments are provided.

Ecological Assessment (Section 2) 4.9.1

Based on the local terrestrial and aquatic communities that are present within the local area, the site is identified as having a low conservation status based on the 'Ecological Communities and Landscape Characters Map' and the 'Conservation Value of Ecological Communities (Table 1)' of the SHFWA DCP 2005. In the DCP map (refer to Figure 26), the subject site is shown as being located in the 'Urban Development and Scattered Trees' terrestrial ecological community – a low conservation status community. Adjoining the site along the foreshore is the aquatic ecological community of the 'Mixed Rocky Intertidal and Sand' and beyond that, the 'Seagrass Beds' community.

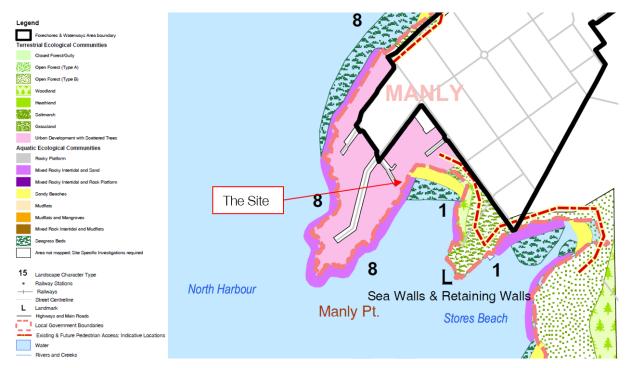


Figure 30: Extract of SHFWA DCP 2005 Ecological Communities and Landscape Characters Map

The mixed rocky intertidal and sand ecological community along the foreshore has a high conservation status, as does the seagrass beds community further away. The proposal will not adversely impact on these communities in terms of overshadowing or urban run-off.

The proposal does not require the removal of mature trees, nor will it have any impact on any existing natural features of the site.

The proposal will comply with the statement of intent and performance criteria set out in the SHFWA DCP 2005.

4.9.2 Landscape Assessment (Section 3)

The subject site is located within the area identified as Landscape Character 8 (refer to Figure 26) which applies to areas including North Sydney, Elizabeth Bay, Neutral Bay, Mosman Bay, Cremorne and Manly. The proposal is consistent with the relevant landscape character and performance criteria for Area 8 as outlined below:

- The proposed development results in a net increase in landscaping on-site to minimise the contrast between built and natural elements;
- The site is adjoined by compatible residential land uses and as such does not require that design and mitigation measures are provided to minimise noise and amenity impacts between incompatible land uses;
- · The site does not adjoin, and the proposed development does not affect any existing maritime uses;
- The proposed development will have no impact on any existing natural features of the site; and
- The proposal does not involve any works at the water edge and will not impact on views of shoreline.

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4.9.3 Design Guidelines for Land Based Development (Section 5)

Siting of Building and Structure (5.3)

Guidelines relating to built form require that the siting and design of new development on foreshore land should consider, in addition to any Council foreshore building line requirement, the following matters:

- · Avoid locating buildings that would require the removal of mature vegetation;
- · Avoid buildings that do not address the waterway;
- Avoid siting buildings to obstruct views and vistas or landmarks on, around or of the waterway from public spaces; and
- · Avoid locating buildings on flat foreshore land that would obstruct views of natural features such as cliffs and steep slopes.

The assessment of the matters for consideration under SREP (Sydney Harbour) 2005 contained in 4.5 demonstrate the proposal is consistent with the above guidelines. Notwithstanding, the siting of the proposal is consistent with the approved development under DA 2018/0639, which was deemed to be acceptable with regard to guidelines contained in 5.3 of the SHFWA DCP.

Built Form (5.4)

The design guidelines relating to built form aim to reinforce the local character and ensure sympathetic development or well-designed contrasting development. The proposal is consistent with the built form guidelines as demonstrated by the assessment of the matters for consideration contained in SREP (Sydney Harbour) 2005 (refer to Section 4.5);

Notwithstanding, the following additional comments are provided to demonstrate the proposal is consistent with the built form design guidelines contained in 5.4:

- The proposed works are generally consistent with the height and scale of the existing building on site and other residential buildings on adjoining sites;
- No new fences are proposed and new retaining walls are generally located in the position of existing walls;
- The proposal does not involve the use of bright lighting such as floodlighting. Appropriate lighting will be used consistent with the residential use of the site;
- The proposed development does not incorporate highly reflective materials orientated to the waterway; and
- The colours and materials are consistent with those used on adjoining sites, also visible from the adjoining waterway.

Further to the above, the proposed built form is consistent with the approved development under DA 2018/0639, which was deemed to be acceptable with regard to guidelines contained in 5.4 of the SHFWA DCP.

Inclinators, Stairs and Driveways (5.14)

The proposed new stairs to the dwelling on the north-eastern side of the property, are generally consistent with the relevant guidelines relating to stairs as outlined below:

- They are integrated into the topography of the site and will not be visually intrusive when viewed from the harbour, foreshore or surrounding properties;
- The stairs will not impact on the visual privacy of the adjoining residential property; and
- It will not obscure or break any view lines of rock faces or other natural landforms.

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5.0 Impacts of the Development

This section of the SEE identifies potential impacts which may occur as a result of the proposed development and are relevant matters for the consideration of the DA under S4.15(1)(b) to (e) of the EP&A Act 1979.

5.1 Bulk and Scale

The preceding sections of this SEE demonstrate that the bulk and scale of the proposal is appropriate and will not give rise to adverse impacts. In summary:

- The proposal has minimal additional overshadowing to adjoining properties and the foreshore;
- The proposal will not have adverse impacts on the character or scenic qualities of the foreshore or waterway;
- The proposal maintains the existing street elevation, and as a result, does not adversely impact on the streetscape;
- The proposal does not have unreasonable impacts on views from adjacent and surrounding properties or public view corridors as outlined in Section 5.2.3 below; and
- The height, bulk and scale of the proposal is consistent with the approved DA 2018/0639 which was previously determined to be acceptable.

5.2 Amenity Impacts on Neighbouring Properties

5.2.1 Privacy Impacts

The design of the proposal seeks to maximise privacy for the subject dwelling and maintain the privacy to the adjoining dwellings. The proposal is considered to satisfy the provisions of the MDCP as outlined in Section 4.6.1, and on this basis, it does not give rise to unreasonable privacy impacts.

5.2.2 Solar Access and Overshadowing

The proposal does not have unreasonable additional overshadowing impacts during mid-winter as illustrated in the shadow diagrams prepared by DBJ (refer to Attachment 4). The proposal has negligible overshadowing impacts to the foreshore.

As outlined in the assessment of the MDCP, the proposal does not have unreasonable overshadowing impacts to the adjoining residential properties. The overshadowing impact to the adjoining properties is consistent with the approved DA2018/069.

5.2.3 View Impacts

The principal driver of this proposal has been to avoid the potential for further view loss of Sydney Harbour and Little Manly Beach from the surrounding properties than what was previously approved DA 2018/0639. For this reason, the proposal is contained within the height, roof form and building footprint of the approved DA. The has been achieved by resolving the shortcomings with the existing structural fabric, and layout of the upper level, by replacing and lowering the existing floor levels. Consequently, the proposal does not result in additional view impacts from that approved under DA2018/0639. Notwithstanding, an overview of the view impacts and previous view impact assessment undertaken for DA2018/0639 is provided below.

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A comprehensive view impact assessment was undertaken for DA2018/0639 in response to the submissions received during the exhibition of the DA that raised views loss concerns.

The assessment required the erection of surveyed height poles at the site. Council subsequently inspected and photographed the potential view loss from properties that had made a submission. The potential view loss was assessed in accordance with planning principle established by the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah* [2004] NSWLEC140 and Section 3.4.3 of MDCP. It is noted that following Council's assessment of the application, a deferred commencement consent was issued by the Northern Beaches Local Planning Panel, which required further modifications to the roof form.

The following properties were considered in the view impact assessment:

- 1 Bruce Avenue;
- Unit 1/3 Bruce Avenue;
- Unit 2/3 Bruce Avenue;
- 5 Bruce Avenue;
- 9 Bruce Avenue;
- Unit 3/46 Addison Road;
- Unit 4/46 Addison Road

The location of these properties is shown in Figure 31. Council's description of the views from the above properties and potential view impact from DA2018/0639 is included in Tables 7 and 8. View impact analysis images for 1, 3 and 5 Bruce Avenue, which were considered to be the most impacted by DA2018/0639, are included in the Architectural Drawing Package (Attachment 4).



Figure 31: Location of subject site and properties assessed

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Nature of affected views that will be impacted	Where are views obtained from	
Harbour (water) views to the south particularly, the views of the Heads and the land water interface will not be impacted. The views would be filtered through existing development and vegetation as pictured below. At present, a large portion of the existing views are to the side and over the top of the subject site dwelling house.	The views affected from this property are obtained over the side boundary of the site over the top of the dwelling house. Views are obtained from a standing and sitting position in the living room and private open space.	
Beach and harbour (water) views to the south. Particularly, the views of the land	The views affected from both of the are obtained over the rear boundary. The views are over the top and to the side of the dwelling house. Views are obtained from a standing and sitting position from living rooms and private open space, filtered through vegetation from No.3 Bruce Avenue and the subject site.	
water interface will be impacted. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the side and over the top of the subject site dwelling house		
Beach and harbour (water) views to the south and south-east. The views of the land water interface will not be impacted. The views would be filtered through existing vegetation as pictured below. At present there is a large portion of the views to the side and over the top of the subject site dwelling house.	The views affected from this property are obtained over the side boundary of the site over the top of the dwelling house. Views are obtained from both a standing position from the bedroom and private open space	
Harbour and beach views to the southeast. Views of the land-water interface and the heads will not be impacted. The views would be filtered through existing development.	The views are affected from both units 3 and 4 are obtained over the side boundary of the site over the top and to the rear of the existing dwelling house. Views are obtained from the sitting positions from the living room and private open space are partial and heavily filtered through existing development.	
Harbour views to the south-west, the views of the land water interface. The heads will	The views affected from this property are obtained over the side boundary over the top and to the rear of the existing dwelling house. Views are obtained from both a standing position from the living room and private open space.	
not be impacted. The views would be filtered through existing vegetation and development as pictured below. At present a large portion of the views to the side and over the top of the subject site dwelling house.		
	Impacted Harbour (water) views to the south particularly, the views of the Heads and the land water interface will not be impacted. The views would be filtered through existing development and vegetation as pictured below. At present, a large portion of the existing views are to the side and over the top of the subject site dwelling house. Beach and harbour (water) views to the south. Particularly, the views of the land water interface will be impacted. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the side and over the top of the subject site dwelling house Beach and harbour (water) views to the south and south-east. The views of the land water interface will not be impacted. The views would be filtered through existing vegetation as pictured below. At present there is a large portion of the views to the side and over the top of the subject site dwelling house. Harbour and beach views to the southeast. Views of the land-water interface and the heads will not be impacted. The views would be filtered through existing development. Harbour views to the south-west, the views of the land water interface. The heads will not be impacted. The views would be filtered through existing development.	

Table 7: Description of existing views from surrounding properties affected by DA2018/0639 (Source: Northern Beaches Council, Development Application Assessment Report, Northern Beaches Local Planning Panel Meeting 6 February 2019).

Council's description of the views from the above properties and potential view impact from DA2018/0639 is included in Table 7.

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Property	Extent of the view impact		
1 Bruce Avenue	No. 1 Bruce Avenue, Manly currently has substantial views to the Harbour and Little Manly Beach. Panoramic views are taken from the living room and adjoining balconies (Outdoor living space) on the ground and first floor to the rear of the site. In regards to both the living rooms and balconies, the proposed works will result in a minor loss of view to the Harbour. The views compromised are over a side boundary. Large views of the Harbour will be retained with the land and water interface retained in full, from the living rooms and balconies.	Qualitatively and considering the existing provision of panoramic views available from No. 1 Bruce Avenue, the extent of view loss proposed is minor.	
1/3 Bruce Avenue	In regards to the living rooms of unit 1 and 2 the views to the harbour will, to a minor extent, be lost as a result	Qualitatively and considering the existing	
2/3 Bruce Avenue	of the proposed works. Views of the land water interface will be retained from the primary living room, and views to Little Manly Beach will be retained. Views from the lower ground rumpus room of Unit 1 (See photo No. 4) including water views and land water interface will be lost to a moderate extent.	provision of panoramic views available from No. 3 Bruce Avenue, the overall extent of view loss proposed is moderate.	
	In regards to the shared terrace area, the occupants will continue to enjoy beach and water views to the south-east as well of the land and water interface to the south-east. Views over the top of the existing dwelling house will be lost. The loss views over the top of the dwelling house include water views and the land and water interface. The level of impact is considered moderate.		
5 Bruce Avenue	The property currently has significant water views to south and south east, the whole of Little Manly Beach and North Head. Views are enjoyed from the bedroom and adjoining balcony on the ground floor and living room and terrace on the first floor.	the extent of the impact is considered to be minor.	
	Views from the ground floor bedroom and balcony would be impacted to a minor extent as a result of the proposed works. Water views over the top of existing dwelling would be compromised by the proposed works. Views of Little Manly Beach, the land and water interface and the majority of water views would be retained.		
	The loss of view from the first floor living room and balcony, as result of the proposed works is negligible to minor.		
9 Bruce Avenue	The property has panoramic water views to the south, south east and south west, Little Manly beach, the land and water interface, north and south head. Views are enjoyed from balconies and the living room on the ground floor.	Beach and water views to the south east will be impacted to a negligible to minor extent	

Beach and water views to the south east will be impacted to a negligible to minor extent. The large majority of views to Little Manly Beach will be retained. The land and water interface, North Head, South Head and the majority of water views will be wholly retained.

3/46 Addison Road

The property has panoramic views to the water to the south and south west, Little Manly beach, North Head and South Head. Views are enjoyed from the living room and adjoining balcony (ground floor of both units) and bedroom and adjoining balcony (first floor of both units).

Therefore, the extent of impact is considered to be negligible

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Water views from both the living rooms and bedrooms and the adjoining balconies of both units would be impacted to a negligible to minor extent. Views of Little Manly Beach, the land and water interface, North Head, South Head and the majority of water views would be retained.

Table 8: Description of existing views from surrounding properties affected by DA2018/0639 (Source: Northern Beaches Council, Development Application Assessment Report, Northern Beaches Local Planning Panel Meeting 6 February 2019).

In terms of considering the reasonableness of the proposal, Council noted that the following:

The proposal responds appropriately to the available views through the provisions of appropriate view corridors over the side and top of proposed dwelling house. Together with a design which incorporates substantial building articulation into the proposal, the proposal ensures highly valued views including water, beach and the land water interface are retained from all affected properties, with the overall impact of the proposal on neighbouring properties in terms of view loss being minor and moderate.

Given the above, it is considered that the proposal is acceptable and viewing sharing is achieved

Given that the proposal maintains the height, roof form and building footprint of the approved DA2018/0639, it is considered to have an acceptable impact on views on the basis that it maintains the same outcomes as DA2018/0639, outlined below:

- It will not cause unreasonable loss of views from surrounding properties;
- It ensures highly valued views including water, beach and the land water interface are retained from all affected properties, with the overall impact of the proposal on neighbouring properties in terms of view loss being minor and moderate;
- It achieves adequate view sharing between properties; and
- It does not impact on existing view corridors or views from public places.

5.3 Construction Impacts

Construction impacts will be managed through the implementation of a Construction Management Plan (CMP) to be prepared and submitted to Private Certifying Authority prior to the commencement of works.

All demolition and excavation works will be undertaken in accordance with the provisions of Australian Standard – AS 2601.

Hours of construction will be undertaken in accordance with Council's requirements, and adjoining properties will be notified prior to commencement of works on site.

As detailed previously, the Terrestrial Biodiversity Report (Attachment 5) includes recommendations during the construction and demolition phases to ameliorate potential impacts on the Little Penguin Endangered Population at Manly and the Long – Nosed Bandicoot Endangered Population at North Head.

Additionally, the Geotechnical Report prepared by JK Geotechnics (refer to Attachment 8) provides recommendations for excavation, demolition, and construction to minimise risks of slope instability.

5.4 Social Impacts and Economic Impacts

The proposal will not give rise to any adverse social impacts. The proposal will have a positive social impact, improving the quality of housing stock in the locality and providing development that is in keeping with the desired future character of the area.

No adverse economic impacts are expected as a result of the proposed development. In the short term, the proposal will have a positive economic impact by providing construction employment.

5.5 The Suitability of the Site for the Development

The preceding sections of this report demonstrate that the site is suitable for the proposed development. The proposed development is consistent with the objectives of the zone and is compatible with surrounding development along the foreshore.

There are no significant natural or cultural constraints that would hinder the proposed development and the proposed development does not result in significant impacts on neighbouring properties or the surrounding area. Accordingly, the site is considered suitable for the proposed development.

5.6 Consultation and Submissions

The application will be notified in accordance with the Council's notification policy. Any submission received will be considered by the consent authority.

5.7 The Public Interest

The development of land in an orderly and economic way is in the public interest.

The public interest in the proposed development of this site is achieved in the provision of well-designed dwelling house with high amenity and minimal impact on the amenity of surrounding properties. The proposal delivers a building of high architectural merit and visual interest in a prominent location.

The proposed development does not impact on public view corridors and does not unreasonably impact on the ecological or biodiversity values of the foreshores. Recommendations have been identified to reduce potential impacts on the habitat of the endangered ecological communities of little penguin and bandicoots within the area.

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6.0 Conclusion

The DA seeks consent for substantial demolition and rebuilding of the existing dwelling house located at 7 Bruce Avenue, Manly.

The site is subject to development consent DA2018/0639 for alterations and additions to the existing dwelling house. This DA seeks consent for the demolition of further elements of the existing dwelling house, but maintains the approved height, roof form and building footprint consistent with consent DA2018/0639.

The application seeks development consent under Section 4.12 of the *EP&A Act 1979* and has been assessed against the provisions of Section 4.15 of the *EP&A Act 1979*.

The proposal is permissible with consent in the E4 Environmental Living zone. The proposal is considered generally consistent with the objectives of the relevant zoning controls and statutory and policy framework applying to the site, including MLEP, MDCP, SREP Sydney Harbour and SHFWA DCP.

Importantly, the proposal is consistent with the height, roof form and building footprint of the approved DA2018/0639. The proposal also retains other key elements of the approved DA2018/0639 including the general layout and arrangement of the dwelling; the location and size of private open space and balconies and the size and configuration of windows along the side and rear boundaries. In this regard the proposal does not give rise to additional impacts on the surrounding properties in terms of view loss, overshadowing or privacy from the approved DA2018/0639.

The proposal provides an appropriate response to the site's context, including the topography of the locality. The height and scale of the development is compatible with and responds to existing character of locality. The proposal provides a balanced approach to the scale of the surrounding development and scenic qualities of the foreshore.

The Statement demonstrates that the proposal does not result in significant adverse environmental, social, economic, or amenity impacts on adjoining properties or the neighbourhood.

Based on the assessment undertaken, the site is suitable for the proposed development and approval of this application is sought.

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Attachments

Attachment 1: Survey Plan prepared by Norton Survey Partners

Attachment 2: Development Consent No. DA2018/0639

Attachment 3: Proposed Alterations and Additions and Implications for the Existing Structure prepared by SDA Structures

Attachment 4: Architectural Drawing Package prepared by Durbach Block Jaggers Architects

Attachment 5: Comparison Approved Architectural Drawings and Proposed Architectural Drawings

Attachment 6: Landscape Plan prepared by Landart

Attachment 7: Stormwater Management Plan and Sediment and Erosion Control Plan prepared by ITM Design Consulting Hydraulic Engineers

Attachment 8: Geotechnical Assessment prepared by JK Geotechnics

Attachment 9: Waste Management Plan

Attachment 10: Terrestrial Biodiversity Report prepared by GIS Environmental Consultants

Attachment 11: BASIX Certificate and Stamped Plans

Attachment 12: Clause 4.6 Variation Request – Height of Buildings Development Standard, prepared by SJB Planning