

Statement of Environmental Effects

Subdivision of Land into
Two (2) Residential Lots

2A West Street
BALGOWLAH

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1.0 Introduction

This statement examines the issues associated with an application for development consent to be submitted to the Northern Beaches Council for the subdivision of land at 2A West Street, Balgowlah, into 2 residential lots.

The proposed subdivision is consistent with the prevailing diverse pattern of subdivisions in this area and will facilitate the construction of a dwelling house with characteristics similar to contemporary residential development in the vicinity of the site.

This statement:

- examines the issues associated with the proposed subdivision;
- analyses the impact of the proposal in the context of development on surrounding properties; and
- undertakes a summary assessment of the proposal in light of the environmental planning legislation applying to the land.

2.0 Site Details

2.1 The Site

The land known as 2A West Street, Balgowlah, is located on the northern side of New Street, between West and Woodland Streets.

A locality plan is contained in **Figure 1**.

The site comprises all of the land contained in Lot 22, DP 739842.

The land is rectangular in shape and has:

- a frontage of 54.265m to New Street;
- an average depth of 53.3m and a width of 20.115m; and
- an area of some 1,064m².

The land contains a 2-storey weatherboard dwelling house and a detached weatherboard garage.

Alterations and additions approved by Development Consent No. 101/2008 issued on 23 May 2008 increased the gross floor area of the development on the land from 228.4m² to 232,8m².

These improvements are located in the western half of the site and are accessed off the New Street West cul-de-sac, east of West Street.

The eastern half of the site contains an number of larger trees and undergrowth and fronts an unconstructed section of New Street East.

The vegetation affected by the works proposed in this application has been assessed in an arboricultural impact assessment prepared by The Ents Tree Consultancy.

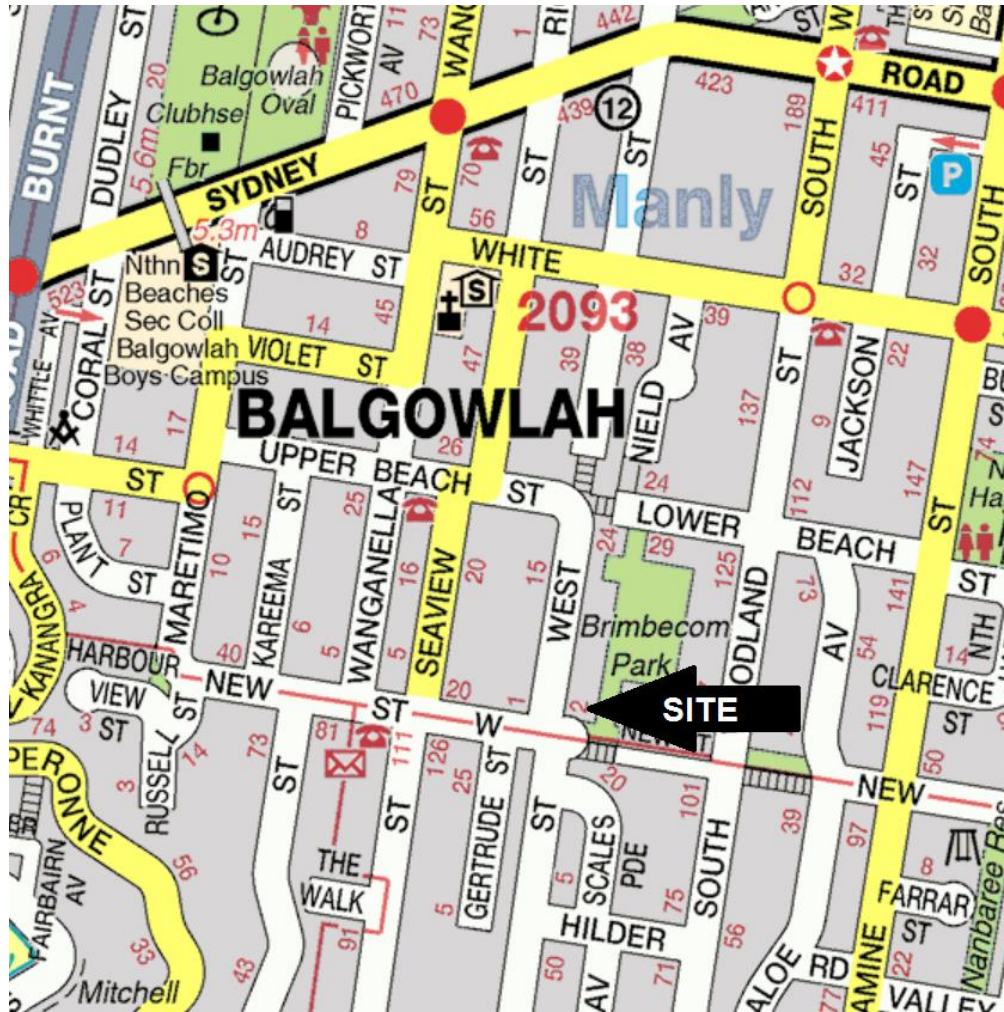
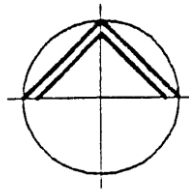
The site experiences a significant fall from its south-western corner to its north-eastern corner.

The land falls some 22m and represents an average grade of 1 in 2.6, or 38.6%.

The land is subject to the following easements:

- an easement to drain water 1m wide in favour of the property at 2 West Street; and
- an easement for sewerage purposes over an existing line of pipes adjacent to the south-western corner of the site.

The buildings, the location of surrounding buildings and the site's topography are shown on a survey plan, prepared by Hill & Blume, Consulting Surveyors, which is to accompany the application.



**Figure 1
Locality Plan**

2.2 Site Context

The site is situated in a residential precinct which contains a diverse range of buildings in terms of their nature, height, bulk, scale and architectural expression.

The land immediately to the north of the site, comprises the property known as 4 West Street.

This property contains a contemporary 5-level residential flat building containing 1 x 2-bedroom and 5 x 3-bedroom apartments.

The development was constructed in accordance with Development Application No.126/2011 approved by the Land and Environment Court of NSW on 19 March 2013 (*Aleksandar Design Group Pty Ltd v Manly Council, Case No. 10676 of 2012*) and a subsequent modification approved by the Court on 20 May 2014.

Previously, the Court, on 30 June 2004, approved Development Application No. 341/03 (*Provincial Planning v Manly Council, Case No.10318 of 2004*) for the demolition of the existing dwelling house on the land, the subdivision of it into 2 x Torrens title lots and the erection of 2 new dwelling houses.

The land further to the north at 6 West Street contains an older-styled 2/part 4-storey residential flat building comprising 6 apartments.

The land immediately to the west of the site, known as 2 West Street, contains an older-styled 2-storey residential flat building comprising 2 apartments.

The land immediately to the east of the site comprises a section of Brimbecom Park which connects to the unconstructed section of New Street East. This section of the park:

- is 2.5m wide;
- does not have any constructed access through it; and
- accommodates a 525mm stormwater pipe serving properties to the east and west of it.

The land further to the east comprises the property known as 105A Woodland Street.

This property contains a 2-storey multi dwelling housing complex comprising 8 dwellings.

The land to the south, on the opposite side of New Street, comprises the properties known as 37-37A New Street East and 39-45 New Street West.

The properties at 37-37A New Street East and 39-43 New Street West contain 2-storey dwelling houses, while 45 New Street West contains a 2-storey duplex building.

The dwelling houses on 37 and 37A New Street East have been constructed on lots created in the subdivision of 22-24 Scales Street.

The subdivision was originally refused by Council and was approved by the Court on 30 January 1996 (*John Bowyer v Manly Council, Case No. 10700 of 1995*).

These lots front the unconstructed section of New Street East and access to them is via a driveway constructed within the road reserve.

New Street West has a fully constructed road pavement terminating at a cul-de-sac some 50m east of West Street.

The remainder of New Street, while unconstructed accommodates:

- public pedestrian access using a stairway to cope with the significant level difference between West and Woodland Streets; and
- the driveway access to 37 and 37A New Street East, with a guard rail located on the northern side of the access.

In summary, the area is characterised as a residential precinct which comprises buildings which vary significantly in terms of their nature, height, design and architectural expression.

The proposed subdivision is consistent with the established subdivision pattern of land in this area and its existing and desired future development character.

3.0 The Proposal

The application seeks development consent for the subdivision of the land into 2 residential lots.

3.1 Background

Development Application No. 427/07 was submitted to Council on 26 October 2007 to subdivide the land into the following 2 lots:

- one containing the existing dwelling house known as 2A West Street at the western end of the site using the existing established access from New Street West; and
- the other at the eastern end of the property which was to be accessed from Woodland Street and New Street East by extending the existing concrete pavement servicing 37 and 37A New Street East.

Council raised issues concerning the status of New Street East over which access was required relating to:

- New Street being a Crown road; and
- the application requiring owner's consent from:
 - the NSW Department of Lands as the proposal sought approval to carry out work on a Crown road; and
 - the owners of 37 and 37A New Street East, the properties for which the existing concrete driveway in New Street East was originally constructed.

Ultimately, the owner/applicant found it all too difficult to address Council's issues and withdrew the application.

The owner's endeavours to obtain owner's consent from the Department of Lands has resulted in the Crown Road section of New Street, between West and Woodland Streets, being transferred to Council by virtue of a notification under the *Roads Act 1993* published in Government Gazette No. 144 on 21 December 2018.

Legal advice received by the owner indicates that the consent of the owners of 37 and 37A New Street East for the use and/or extension of the existing driveway is not required as the driveway is located on public land and they are not the owners of the driveway or the land on which it is located.

In these circumstances, the owner now wishes to re-apply for the subdivision.

3.2 Subdivision

It is proposed to subdivide the land into the 2 following residential lots:

Lot No.	Area	Width	Depth	Frontage to	Remarks
1	564m ²	20.115m	29.45m	New Street West	The existing dwelling house and garage known as 2A West Street are to be retained without alteration
2	500m ²	20.115m	24.81m	New Street East	New residential lot

The proposed subdivision is shown on the plan contained in **Figure 2**.

The existing house and garage on Lot 1 are:

- to be retained without alteration;
- to maintain current setbacks; and
- to be setback between 7.2m and 7.5m from the common boundary between Lots 1 and 2.

Access to Lot 2 is to be via an extension to the driveway that exists in the unconstructed section of New Street East servicing 37 and 37A New Street.

The driveway extension has been designed to minimise its environmental impact by constructing it on piers to minimise its effect on existing significant trees in the New Street East road reserve and to permit existing water flow paths to continue under the driveway uninterrupted.

The driveway extension will require the removal of 5 trees in the New Street East road reserve, namely:

- 2 dead trees;
- a Camphor Laurel, which is a weed species;
- a Sweet Pittosporum; and
- a Blue Gum.

The proposal doesn't seek approval for a dwelling house on Lot 2.

However, the documentation submitted with the application demonstrates an indicative building platform that could be used to construct a dwelling house of a height, bulk and scale commensurate with the prevailing standard of residential development in this locality which is to be subject to a separate application to be submitted to and approved by Council.

The size and shape of Lot 2 is sufficient to accommodate a dwelling house which accords with Council's standards and controls.

The indicative building platform on Lot 2 has been positioned to avoid existing trees on the site and to maintain the amenity enjoyed by residents of surrounding properties.

Any building constructed on Lot 2 will be indiscernible from West and Woodland Streets and will complement the dwelling houses on 37 and 37A New Street East which front the unconstructed section of New Street.

Part of an existing easement to drain water 1m wide within Lot 2 is proposed to be realigned to adjoin the land's northern boundary and extended to its eastern common boundary with Brimbecom Park.

A right is to be granted to enable Lot 1 to use the existing easement to drain water to Council's stormwater system which serves surrounding properties in this area located through Brimbecom Park.

Other utility services are available for the new allotment.

The application is to be accompanied by:

- a survey plan and subdivision plan prepared by Hill & Blume, Consulting Surveyors;
- an arboricultural impact assessment prepared by The Ents Tree Consultancy;
- a traffic impact statement prepared by Transport and Traffic Planning Associates; and
- plans prepared by Hughes Trueman, Consulting Engineers showing a conceptual driveway design and an indicative building platform.

4.0 Manly Local Environmental Plan 2013

4.1 Zoning

The land is zoned R2 Low Density Residential under the terms of *Manly Local Environmental Plan 2013 (MLEP 2013)*, which was made on 19 April 2013.

Subdivision of land requires Council's consent under Clause 2.6(1) of the *Plan*.

Consequently, the proposed subdivision is permissible, with Council's consent.

Development for the purposes of a "dwelling house" is permissible, with Council's consent, on the lots to be created in this R2 Low Density Residential zone.

Clause 2.3(2) of *MLEP 2013* requires consideration to be given to the objectives for development in a zone when determining a development application.

The relevant objective for development in the R2 Low Density Residential zone is to provide for the housing needs of the community within a low density residential environment.

The proposal is clearly consistent with the nature of residential development in this locality and with this objective.

Schedule 5 of *MLEP 2013* has not identified:

- any "heritage items" or "archaeological sites" on the land; or
- the land being located within any "heritage conservation area".

Accordingly, the proposal is permissible, with Council's consent, under the terms of *MLEP 2013*.

4.2 Provisions of the Plan

A summary assessment of the proposal under the relevant provisions of *MLEP 2013* is as follows.

Provisions of Manly Local Environmental Plan 2013

Clause	Consideration	Proposed	Compliance
1.2(2)	Aims of the <i>Plan</i>	The proposal is consistent with the aims of the <i>Plan</i>	✓
1.4	Definitions - Land Use	The proposal represents “ <i>subdivision</i> ” under the definitions adopted by the <i>Plan</i>	✓
2.2	Zoning as shown on <i>Land Zoning Map</i>	The land is in the R2 Low Density Residential zone on the <i>Land Zoning Map</i>	✓
2.3(1)	Land Use Table - R2 Low Density Residential zone	The proposal will facilitate the construction of a “ <i>dwelling house</i> ”, development which is permissible, with Council’s consent, within the R2 Low Density Residential zone	✓
2.3(2)	The objectives for development in the R2 Low Density Residential zone	The proposal is consistent with the relevant objective for development in the R2 Low Density Residential zone. See Section 4.1	✓
2.6(1)	Consent is required for the subdivision of land	This application seeks the required consent for the subdivision as outlined in Section 3.2	✓
2.7	Consent is required for the demolition of buildings	The proposal does not involve the demolition of any buildings	✓
4.3(2)	The height of buildings is not to exceed the height shown on the <i>Height of Buildings Map</i> , which in this case is 8.5m	The proposal does not involve the construction of any buildings	✓
4.4(2)	The floor space ratio of buildings is not to exceed the floor space ratio shown on the <i>Floor Space Ratio Map</i> which, in this case, is 0.45:1	The proposal does not involve the construction of any buildings. The existing dwelling house on Lot 1 has a gross floor area of 232.8m ² , which represents a floor space ratio of 0.41:1 when related to the area of Lot 1 of 564m ²	✓
4.6(2)	Consent may be granted for development even though it would contravene a development standard imposed by the <i>Plan</i> or other environmental planning instrument	The proposal does not involve the contravention of any development standard contained in an environmental planning instrument	✓
5.1	Land reserved for a public purpose is identified on the <i>Land Reservation Acquisition Map</i>	The land has not been identified as being reserved for any public purpose on the <i>Land Reservation Acquisition Map</i>	✓

Provisions of Manly Local Environmental Plan 2013

Clause	Consideration	Proposed	Compliance
5.9(3)	Consent is required for the lopping or removal of trees and vegetation	The application seeks consent for the removal of the 5 trees in the New Street East road reserve, specified in Section 3.2, required to accommodate the driveway to Lot 2. The trees to be removed are not significant in a local or district context	✓
5.10(2)	Consent is required for development involving a "heritage item" or in a "heritage conservation area"	The land does not contain any "heritage items" nor is it located in any "heritage conservation area"	✓
5.10(5)	A heritage management document may be required for development on land: <ul style="list-style-type: none"> • which contains a "heritage item"; • within a "heritage conservation area"; or • within the vicinity of a "heritage item" or a "heritage conservation area" 	The only "heritage item" in the vicinity of the site is a retaining wall in West Street. The proposal will not have any effect on the heritage significance or setting of this wall. A heritage management document is unnecessary and unwarranted in relation to the proposal	✓
6.1	Consent is required for specified works on land shown on the <i>Acid Sulfate Soils Map</i>	The land has been identified as containing Class 5 acid sulfate soils on the <i>Acid Sulfate Soils Map</i> . The proposal does not involve the carrying out of any building works that require consent under Clause 6.1	✓
6.2	Consent is required for earthworks	This application seeks the required consent to construct the driveway extension from New Street East into Lot 2	✓
6.3	Flood planning	The land is not at or below the level of a 1:100 ARI flood event + 0.5m freeboard	✓
6.4	Stormwater management	Stormwater disposal issues associated with the subdivision are to be resolved by the creation of an appropriate easement through Lot 2 and connection to Council's established stormwater network serving properties in this locality. Stormwater management issues associated with the construction of any building on the proposed Lot 2 are to be addressed when a building is proposed on that land	✓
6.5	Terrestrial biodiversity	The land has not been identified as containing any "terrestrial biodiversity" on the <i>Terrestrial Biodiversity Map</i>	✓

Provisions of Manly Local Environmental Plan 2013

Clause	Consideration	Proposed	Compliance
6.6	Riparian land and watercourses	The land has not been identified as containing any “ <i>watercourses</i> ” on the <i>Watercourses Map</i> nor is it within 40m of the top of the bank of any identified “ <i>watercourse</i> ”	✓
6.7	Wetlands	The land has not been identified as containing any “ <i>wetlands</i> ” on the <i>Wetlands Map</i>	✓
6.8	Landslide risk	The land has not been identified as containing any “ <i>landslide risks</i> ” on the <i>Landslide Risks Map</i>	✓
6.9	Foreshore scenic protection area	The land has not been identified as being in any “ <i>foreshore scenic protection area</i> ” on the <i>Foreshore Scenic Protection Area Map</i>	✓
6.10	Development on foreshore areas	Not applicable to development on this land	✓
6.11	Active street frontages	Not applicable to development on this land	✓
6.12	Essential services	The land is served by the required utility service infrastructure required for residential development on the land	✓
6.13	Design excellence	Not applicable to this application	✓
6.14	Requirement for development control plans	Not applicable to development on this land	✓
6.15	Tourist and visitor accommodation	Not applicable to this application	✓
6.16	Gross floor area in Zone B2	Not applicable to this application	✓
6.17	Health consulting rooms in Zones E3 and E4	Not applicable to this application	✓
6.18	(Repealed)	Noted	✓
6.19	Development in St. Patrick’s Estate	Not applicable to this application	✓
6.20	Location of sex services premises	Not applicable to this application	✓
6.21	Noise impacts - Licensed premises	Not applicable to this application	✓
6.22	Development for secondary dwellings in certain residential and environmental zones	Not applicable to this application	✓

The proposal complies with all of the relevant provisions contained in *MLEP 2013*.

4.3 Other Environmental Planning Instruments

A summary assessment of the proposal in terms of relevant State and regional environmental planning instruments and policies applying to the land is as follows.

Instrument	Comment	Compliance
<i>SEPP No. 19 - Bushland in Urban Areas</i>	This <i>Policy</i> applies to land which adjoins bushland zoned or reserved for public open space purposes.	✓
	The site adjoins a 2.5m wide corridor connecting the unconstructed section of New Street East to Brimbecom Park which is zoned for public open space purposes.	
	The vegetation in this corridor is degraded but may contain remnants of the original vegetation in the area. However, this vegetation does not appear to comprise “bushland” under the terms of the <i>Policy</i> .	
	The proposed subdivision and indicative building platform have been designed to minimise their effect on any “bushland” on the site.	
	The proposal will not have any effect on any “bushland” located within the adjoining land which is zoned for public open space purposes.	
<i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>	The proposal is consistent with the aims, objectives and provisions of this <i>Policy</i>	
	A BASIX certificate is to be obtained for any building works proposed on the lots to be created as a result of the subdivision.	✓
<i>State Environmental Planning Policy No.55 - Remediation of Land</i>	The proposal is consistent with the aims, objectives and provisions of this <i>Policy</i>	
	The land and surrounding land has been used for many years for residential purposes and there is no evidence of any soil contaminating activities having been carried out on the land or surrounding properties.	✓
<i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i>	The proposal is consistent with the aims, objectives and provisions of this <i>Policy</i>	
	The site is not located within the Foreshores and Waterways Area identified in the <i>Plan</i> .	✓
	There are no relevant provisions contained in the <i>Plan</i> applicable to this proposal.	
	The proposal is consistent with the aims, objectives and provisions of this <i>Plan</i>	

The proposal does not raise any issues relating to the relevant provisions of State and regional environmental planning instruments applying to the proposed subdivision.

5.0 Manly Development Control Plan 2013

Manly Development Control Plan 2013 (MDCP 2013), which became effective 19 April 2013, and which was most recently amended on 28 August 2017, applies to development in this area.

A summary assessment of the proposed subdivision under the relevant provisions of the *Plan* is as follows.

Part 3 - General Principles of Development

Issue	Response
Streetscapes and Townscapes	The proposal will not have any adverse effect on the streetscape or townscape qualities of this locality
Heritage	The proposal does not have any effect on any item of heritage significance
Landscaping	The proposal does not involve any building works
Amenity	The proposal will not have any adverse effect on the amenity enjoyed by residents of surrounding properties in terms of overshadowing, loss of privacy, view loss or visual impact
Sustainability	Any buildings to be constructed as a result of the subdivision will meet contemporary sustainability requirements
Accessibility	Any buildings to be constructed as a result of the subdivision will meet contemporary access requirements
Stormwater Management	Appropriate stormwater management infrastructure can be established in relation to any future building works
Waste Management	Satisfactory waste management procedures can be made available in the same manner as those employed at 37 and 37A New Street East
Mechanical Plant Equipment	Not applicable to this application

Part 4 - Development Controls

A summary assessment of the proposed subdivision in terms of the relevant controls contained in Part 4 of *MDCP 2013* is as follows.

Issue	Response
<p>Part 4.1.1.2: A subdivision involving a new lot for residential development less than 500m² must identify on the subdivision plan that a dwelling can be successfully accommodated on each allotment, in compliance with the <i>MDCP 2013</i>. Concept plans of likely future redevelopment may be required</p>	<p>Both lots are to have an area in excess of 500m². Consequently, concept plans of likely future redevelopment are not required</p>
Each lot must have frontage to a public road being at least 1m wide	The proposed lots are to have a minimum frontage of 29.45m and 24.81m to New Street
Battle-axe allotments must provide a 3.5m wide vehicular access handle to a public road	The lots are not battle-axe lots
Driveways longer than 30m require provision of a passing bay	Lot 2 is not a battle-axe lot and the driveway to it from New Street East is considerably less than 30m
The provision of drainage, easements and servicing requirements must be considered and any resultant adverse impacts	The subdivision accommodates drainage, easements and servicing requirements in favour of Lot 1 and 2 West Street over Lot 2

Issue	Response
<p>Part 4.4.8.1: All subdivisions are to provide adequate vehicular access to a public road</p>	Adequate vehicular access is available to both lots from New Street. See Section 7.1
<p>The provision of drainage, easements and servicing requirements are to be considered and any resultant adverse impacts - environmental or otherwise are to be minimised or resolved in the design. In particular, sufficient details of stormwater management are to accompany applications for subdivision</p>	<p>The subdivision accommodates drainage, easements and servicing requirements in favour of Lot 1 and 2 West Street over Lot 2.</p> <p>Stormwater drainage is to be connected to Council's stormwater system located through Brimbecom Park serving surrounding properties</p>
<p>Part 4.4.8.2: New Subdivisions are to complement the prevailing subdivision pattern respecting traditional street patterns; open space patterns and streetscape as well as both built and natural heritage. Any inconsistency in traditional patterns is to be minimised or resolved</p>	<p>The proposed subdivision will complement the prevailing subdivision pattern in both West Street, which contains battle-axe lots at 8A, 12A, 14A, 16A and 18A, and in New Street East resulting from the multi dwelling housing complex on 105A Woodland Street and 37 and 37A New Street East.</p> <p>The proposal will not have any readily identifiable effects on the streetscapes in this area or the built or natural environment</p>
<p>New Subdivisions are to have regard to existing vegetation, topography, views, scenic values and natural bushland and other natural features. Any resultant adverse impacts - environmental or otherwise are to be minimised or resolved in the design and addressed in the Statement of Environmental Effects accompanying the application</p>	<p>The proposed subdivision is satisfactory and appropriate in terms of vegetation, topography, views, scenic values and natural bushland and other natural features.</p> <p>See also Section 7.0</p>
<p>Part 4.4.8.3: The orientation and design of new allotments should maximise optimum solar access and provide for energy efficiency for future development under <i>BASIX</i></p>	The east/west orientation and design of Lot 2 optimises the opportunities for solar access and energy efficiency for any future development on it

The residential development controls contained in Part 4.1 of *MDCP 2013* are to be considered in relation to any building works that may be proposed on the lots to be created in the subdivision.

Part 5 Special Character Areas and Sites

Issue	Response
Conservation Areas	Not applicable to this application
Foreshore Scenic Protection Areas	Not applicable to this application
Threatened Species and Critical Habitat	The land does not support any threatened species or critical habitats
Flood Control Lots	The land has not been identified as a flood control lot
Riparian Land and Watercourses	The land has not been identified as containing any "watercourses" on the <i>Watercourses Map</i> nor is it within 40m of the top of the bank of any identified "watercourse"
Road Widening	Not applicable to this application
Gurney Crescent & Clavering Road, Seaforth	Not applicable to this application

The proposal is consistent with the relevant controls contained in *MDCP 2013*.

6.0 Issues

6.1 Access to New Street

The established access to the existing house, known as 2A West Street, on Lot 1 from the constructed section of New Street West is to be continued to be used to provide access to Lot 1.

Access to Lot 2 is to be via an extension to the existing driveway serving the houses at 37 and 37A New Street East within the unconstructed road reserve of New Street off Woodland Street.

The existing driveway along New Street East:

- is some 92m long from Woodland Street, has a minimum width of 3m widening to 4.5m over a distance of 10.5m, 21m west of the Woodland Street alignment; and
- is constructed with a concrete surface on a straight alignment, with kerb and gutter along its southern side and a guard rail for some 45m along its northern side terminating at the pedestrian steps linking the upper and lower sections of New Street which are separated by a significant difference in levels.

The proposed extension of the driveway by some 17.5m to access Lot 2 is to be constructed in accordance with the plans prepared by Hughes Trueman, Consulting Engineers.

A traffic impact statement prepared by Transport and Traffic Planning Associates accompanying the application indicates that:

- the proposed subdivision will increase the peak hours vehicle movements (two way) along the driveway from 2 movements to 3 movements; and
- servicing arrangements for Lot 2 would be the same as those currently operating in relation to 37 and 37A New Street East.

It is noted that in Woodland Street there are:

- “No Stopping” restrictions applying to both sides of the street between 83 and 105A Woodland Street; and
- 2 raised speed control platforms, to the north and south of New Street East, act to control vehicle speed in this locality.

The statement concludes that:

- there will be no unsatisfactory traffic implications resulting from the proposed subdivision; and
- suitable vehicle access can be achieved.

In relation to Development Application No. 427/07 that was submitted to Council on 26 October 2007 to subdivide the land, Council raised issues concerning the status of New Street East over which access was required relating to:

- New Street being a Crown road; and
- the application requiring owner's consent from:
 - the NSW Department of Lands as the proposal sought approval to carry out work on a Crown road; and
 - the owners of 37 and 37A New Street East, the properties for which the existing concrete driveway in New Street East was originally constructed.

The owner's endeavours to obtain owner's consent from the Department of Lands has resulted in the Crown Road section of New Street, between West and Woodland Streets, being transferred to Council by virtue of a notification under the *Roads Act 1993* published in Government Gazette No. 144 on 21 December 2018.

Legal advice received by the owner indicates that the consent of the owners of 37 and 37A New Street East for the use and/or extension of the existing driveway is not required as the driveway is located on public land and they are not the owners of the driveway or the land on which it is located.

In these circumstances, the access to Lot 2 from New Street East is satisfactory and appropriate,

6.2 Impact on Surrounding Environment

The impact of the proposed subdivision needs to be considered in terms of a number of matters that were considered by the Land and Environment Court of NSW in relation to a development application for the subdivision of the adjoining property to the north, namely 4 West Street, and the construction of a dwelling house on each of those lots (*Provincial Planning Pty Ltd v. Manly Council*).

The Court upheld the appeal, granted consent and made the following observations concerning the proposal:

- the context of the area involved:
 - the site having residential flat buildings adjoining on either side;
 - the area being mixed in terms of the residential densities;
 - the proposed development fitting into its context;
- the proposal was one that provided for the orderly and economic development of the land;
- in terms of the trees:
 - a number of significant trees were to be retained on the site, despite 26 of the 57 trees on it were to be removed;
 - consideration needed to be given to additional canopy trees to be planted as part of the development to allow for landscaping to be integrated with the development;

- despite surrounding residents having enjoyed what was basically a bushland vacant parcel of land adjoining their properties, it was unreasonable to expect such a situation to be maintained;
- the proposed development had regard to the need to continue to contribute to the vegetated environment; and
- it was always somewhat curious that trees on other people's land are more highly valued at times than trees on people's own property.

Subsequently, the Court approved Development Application No.126/2011 on 19 March 2013 (*Aleksandar Design Group Pty Ltd v Manly Council*) for the construction a residential flat building on 4 West Street containing 5 units with basement parking for 12 vehicles and the subsequent modification of that consent on 20 May 2014 to facilitate the contemporary 5-level building containing 1 x 2-bedroom and 5 x 3-bedroom apartments currently on that land.

An arboricultural impact assessment of the proposed subdivision, prepared by The Ents Tree Consultancy, is to accompany the application.

Neither the construction of the driveway to Lot 2 from the existing driveway in New Street East nor the indicative building platform on Lot 2 will require the removal of any significant trees.

In this context, the proposed subdivision is satisfactory and appropriate in terms of its effect on vegetation, topography, views, scenic values and natural bushland and other natural features in this locality.

6.3 Impact on Local Amenity

The subdivision does not involve the carrying out of any physical works on the site, with the exception of the construction of the driveway to Lot 2 from New Street East, and will not have any unacceptable environmental impacts.

Lot 2 is of a size and shape that can adequately accommodate the construction of an appropriately designed dwelling house of a height, bulk and scale commensurate with the character of surrounding residential development which will not have any undue or unreasonable effect on the amenity enjoyed by residents of surrounding and nearby properties in terms of:

- privacy;
- solar access;
- view loss; or
- visual impact,

nor will it have any significant effect on elements of the natural environment in this locality.

7.0 Statutory Compliance Assessment

The following is a summary assessment of the proposal under the heads of consideration contained in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

Section 4.15(1)(a)(i) - The provisions of any environmental planning instrument

The proposal is permissible, with Council's consent, and conforms with all of the relevant provisions of the environmental planning instruments applying to this land. See Section 4.0.

Section 4.15(1)(a)(ii) - The provisions of any proposed instrument that is, or has been, publicly exhibited and notified to the consent authority

There are no proposed instruments relevant to this proposal.

Section 4.15(1)(a)(iii) - The provisions of any development control plans

The proposal is consistent with the objectives and controls contained in the development control plan applicable to this proposal. See Section 5.0.

Section 4.15(1)(a)(iiia) - The provisions of any planning agreement under Section 7.4

The application does not propose a planning agreement.

Section 4.15(1)(a)(iv) - Matters prescribed by the Regulations

There are no relevant matters prescribed by the *Regulations* applicable to this matter.

Section 4.15(1)(a)(v) - Any coastal zone management plan

The land is not subject to any coastal zone management plan.

Section 4.15(1)(b) - Likely impacts of the development

The proposal will have no adverse or identifiable impact in terms of:

- context and setting;
- access, transport and traffic;
- the public domain;
- utilities;
- heritage;
- other land resources;
- water;
- soils;
- air and microclimate;
- flora and fauna;
- waste;
- energy;
- noise and vibration;

- natural hazards;
- technological hazards;
- safety, security and crime prevention;
- social impact;
- economic impact;
- site design and internal design;
- construction; or
- cumulative impacts.

Section 4.15(1)(c) - Suitability of the site for the development

The site is suitable for the proposal in accordance with the requirements contained in the *MLEP 2013* and *MDCP 2013*.

Section 4.15(1)(d) - Submissions

Any submission received by Council following the notification of the application in accordance with Council's notification policy is to be considered in the determination of this application.

Section 4.15(1)(e) - Public interest

There is no issue, which is in the public interest, that should preclude the approval of this proposal.

In fact, the public interest would best be served by the approval of the application in light of:

- the proposal being consistent with the objectives and desired outcomes of *MLEP 2013* and *MDCP 2013*; and
- the proposal facilitating the economic use and development of the available land resource in this area in accordance with the objects of the *Environmental Planning and Assessment Act 1979*.

8.0 Conclusion

The proposal is permissible, with Council's consent, under the terms of *MLEP 2013* and complies with the aims and all of the relevant provisions of the *Plan*.

The proposal is consistent with the objectives and controls contained in *MDCP 2013*.

The proposed subdivision is consistent with the prevailing subdivision pattern in this locality and the existing and desired future character of development in its vicinity.

The lots in the subdivision are capable of accommodating dwelling houses that are consistent in terms of their height, bulk and scale with the prevailing character of dwelling houses and other residential development in this locality without causing any adverse environmental or amenity impacts.

The proposal will not have any adverse effect on the amenity enjoyed by residents of surrounding and nearby properties in terms of:

- privacy;
- solar access;
- view loss; or
- visual impact,

nor will it have any significant effect on elements of the natural environment in this locality.

The public interest would best be served by the approval of the application having regard to:

- the proposal being consistent with the objectives and desired outcomes of *MLEP 2013* and *MDCP 2013*; and
- the proposal facilitating the economic use and development of the available land resource in this area in accordance with the objects of the *Environmental Planning and Assessment Act 1979*.

The proposal conforms with the statutory heads of consideration contained in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Accordingly, the application is suitable for approval.