

STATEMENT OF ENVIRONMENTAL EFFECTS REPORT

Construction of New Two Storey Dwelling

-No. 4 Munoorra Street, Seaforth

August 2021

CONTENTS

1.0 INTRODUCTION	3
2.0 SITE DETAILS.....	4
2.1 SITE LOCATION.....	4
2.2 SITE DESCRIPTION.....	4
2.3 SITE CONTEXT	5
3.0 PROPOSED DEVELOPMENT	6
4.0 PLANNING CONSIDERATIONS.....	8
4.1 STATE ENVIRONMENTAL PLANNING POLICY NO.55-REMEDIATION OF LAND (SEPP 55)	8
4.2 STATE ENVIRONMENTAL PLANNING POLICY (BASIX) 2004.....	8
4.3 STATE ENVIRONMENTAL PLANNING POLICY (VEGETATION IN NON-RURAL AREAS) 2017.....	8
4.4 MANLY LOCAL ENVIRONMENTAL PLAN 2013 (MLEP 2013).....	8
4.5 MANLY DEVELOPMENT CONTROL PLAN 2013	9
5.0 SECTION 4.15 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.	15
6.0 CONCLUSION	16

APPENDIX 1-Clause 4.6 Exception to Development Standard request to Clause 4.4-Floor Space Ratio

1.0 INTRODUCTION

Metro Planning Services has been engaged by G J Gardner Homes (Brookvale) to prepare a Statement of Environmental Effects Report (SEE) in support of a development application which seeks consent for the construction of a new two storey dwelling on a vacant property located at 4 Munoorra Street, Seaforth.

The site is zoned R2 Low Density Residential under the provisions of Manly Local Environmental Plan 2013 (MLEP 2013) and the dwelling is permissible with consent.

The proposal has an FSR of 0.47:1 (GFA-287.76m²) and accordingly also seeks a minor Clause 4.6 Exception to Development Standard request to the mapped Floor Space Ratio (FSR) development standard of 0.45:1 (274.725m²) under Clause 4.4 of MLEP 2013. Refer Appendix 1. The variation is 13m² which represents a minor variation of 4.7%.

The dwelling has been found to be generally consistent with the relevant controls of Manly Development Control Plan 2013 on merit grounds as demonstrated throughout this report.

The report is intended to assist Northern Beaches Council in its assessment of the development application and incorporates the following details:

- Description of site and context;
- Description of proposed development;
- Consideration of relevant planning considerations;
- Consideration of relevant environmental effects;

The report should be read in conjunction with the following supporting material:

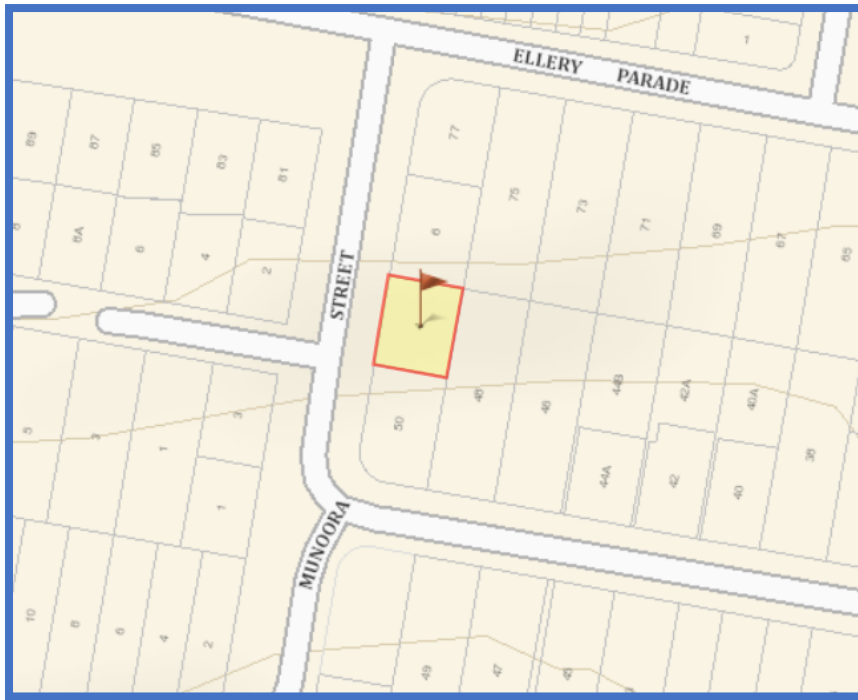
- Architectural Plans prepared by KJR Drafting;
- Landscape Plan prepared by Contour Landscape Architecture;
- BASIX Certificate prepared by KJR Drafting;
- Concept Stormwater Plan prepared by Nastasi & Associates Consulting Engineers;

2.0 SITE DETAILS

The following details of the site's location and physical characteristics are provided to assist Council in the assessment of the development application.

2.1 Site Location

The subject land is located at 4 Munoorra Street, Seaforth, as identified in **Figure 1**.



2.3 Site Context

This site is located within a low density residential area of Seaforth comprising a mixture of single and two storey detached dwellings on similar sized lots to the subject site as identified in **Figure 2**.

The site has no significant site constraints including flooding or bushfire.



Figure 2-Aerial view of site

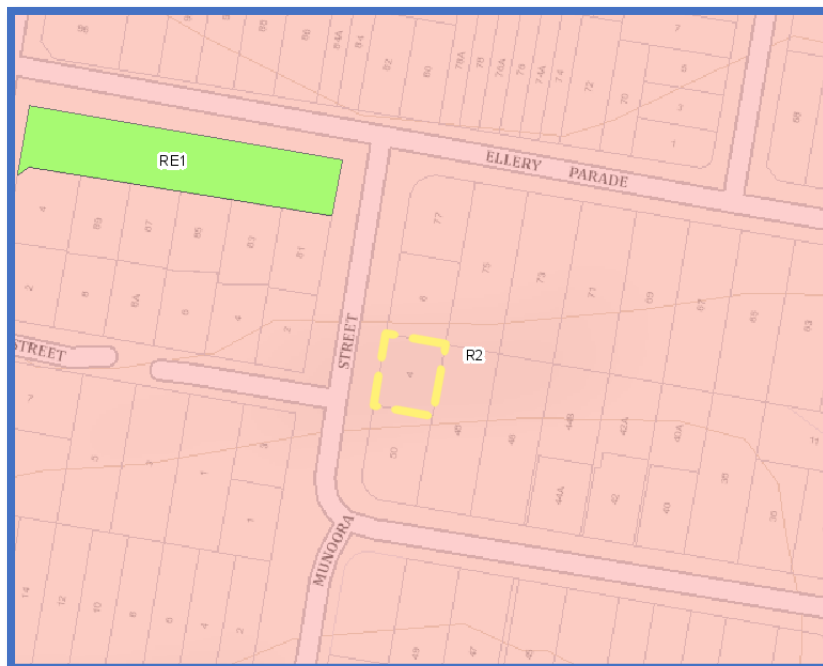


Figure 3- R2 Zoning of the site.

3.0 PROPOSED DEVELOPMENT

The development application seeks consent for the construction of a new two storey dwelling and associated works which is permissible with consent.

The new dwelling is proposed to be constructed of rendered brick veneer walls on the ground floor level and timber clad materials on the upper first floor level. The roof is proposed to be constructed of metal colorbond material. The presentation of the dwelling to the Munoorra streetscape is well articulated and will complement the surrounding locality.

The proposal includes the following:

Ground Floor:

- Double garage;
- Entry, mudroom & ground floor staircase;
- Open style family and kitchen room with attached walk-in-pantry;
- Laundry & bathroom;
- Rumpus room & lounge.

First Floor:

- Five (5) bedrooms including Master bedroom with attached walk-in-wardrobe and ensuite;
- Bathroom & WC;
- Study room;
- First floor staircase.

The proposed dwelling has a gross floor area (GFA) of 287.76m², site area of 610.5m² and floor space ratio (FSR) of 0.47:1 which exceeds the maximum FSR of 0.45:1 (274.725m²) by 13.0m² (4.7%). Accordingly, the proposal is supported by a Clause 4.6 Variation request which is contained in Appendix 1.

The proposal provides for stormwater disposal in accordance with a concept stormwater plan prepared by Natasi & Associates Consulting Engineers which provides for all collected stormwater being directed to an OSD tank and then discharged to the public drainage system in Munoorra Street.

The proposal provides for a new driveway to be constructed adjacent to the Southern side boundary.

The proposal does not require the removal of any trees.

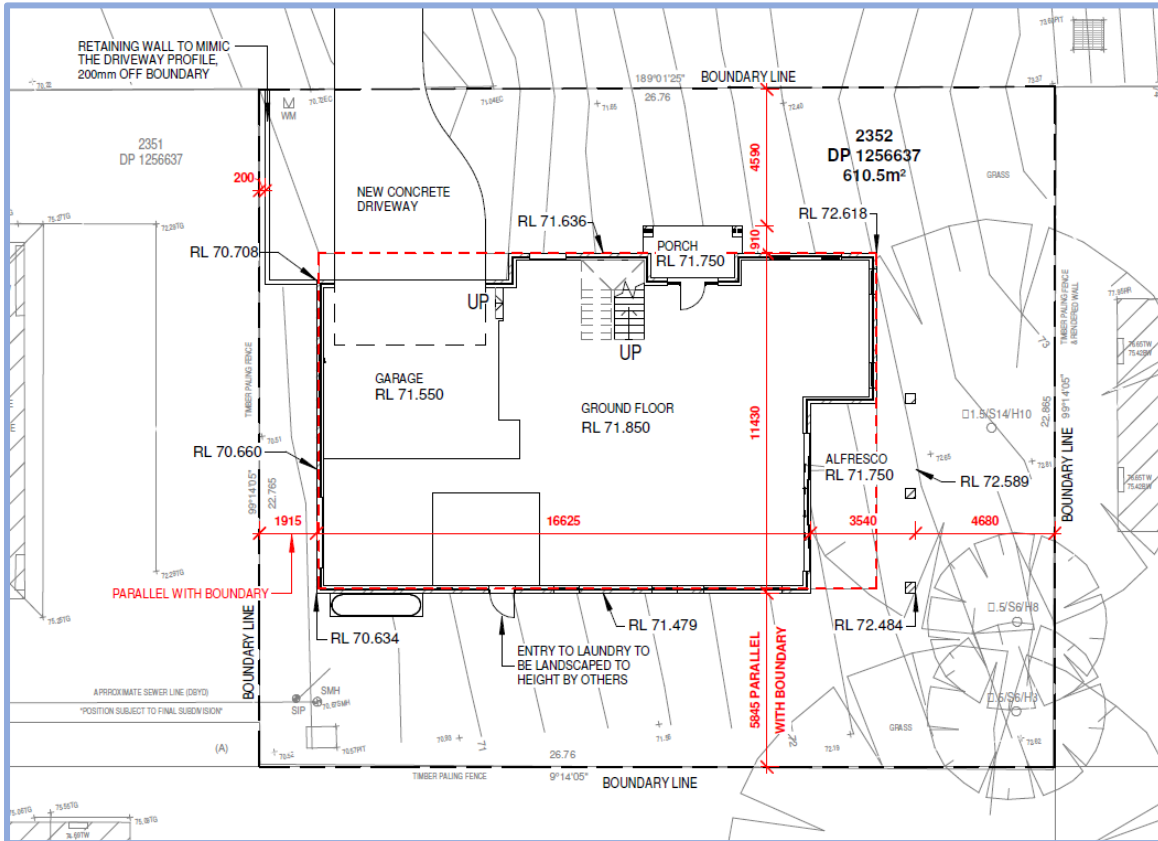


Figure 4-Site Plan

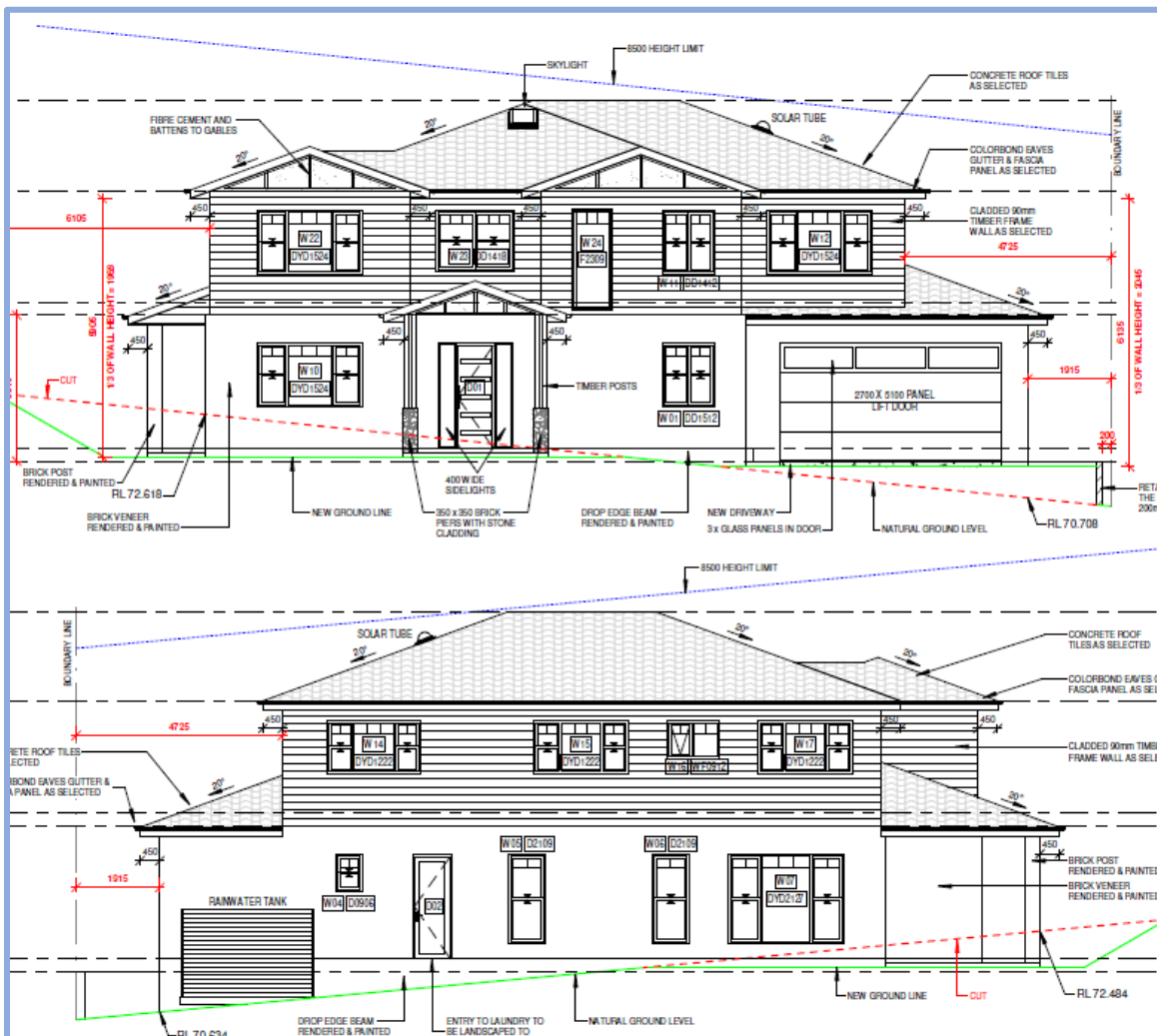


Figure 5-Front & rear elevations

4.0 PLANNING CONSIDERATIONS

4.1 State Environmental Planning Policy No.55-Remediation of Land (SEPP 55)

Pursuant to Clause 7 of SEPP 55, a consent authority is unable to grant development consent unless it has considered whether the land is contaminated and, if so, whether the consent authority is satisfied that the land is suitable in its contaminated state or can be remediated to be made suitable for the purposes for which the development is proposed to be carried out.

The site displays no evidence of contamination and is suitable for its continued residential use. On this basis, the proposal is consistent with relevant objectives and matters for consideration under SEPP 55 and suitable for its proposed residential use.

4.2 State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004

A BASIX Certificate is submitted with the development application. The BASIX Certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal.

4.3 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the State through the appropriate preservation of trees and other vegetation.

The site does not comprise any trees or vegetation of biodiversity or visual amenity significance that requires removal. On this basis, the proposal is consistent with State Environmental Planning Policy (Vegetation in Non-Rural Areas).

4.4 Manly Local Environmental Plan 2013

The subject land is zoned R2 Low Density Residential under the provisions of Manly LEP 2013 and the proposal is permissible with the consent of Council. An assessment of the proposal with relevant clauses of MLEP 2013 is addressed in **Table 1**.

MANLY LOCAL ENVIRONMENTAL PLAN 2013		
Clause	Comment	Compliance
1.0-PRELIMINARY		
1.2 Aims of Plan	Proposal consistent with aims of the plan.	Yes
2.0-PERMITTED OR PROHIBITED DEVELOPMENT		
2.1 Land use Zones	The site is zoned R2 Low Density Residential.	Yes

2.3 Zone Objectives	<p>R2 Low Density Residential zone</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah. <p>The proposal represents a new two storey dwelling which is a permissible use in the zone and is consistent with the objectives of the R2 Low Density Residential zone. It is considered that the proposed development achieves these objectives by:</p> <ul style="list-style-type: none"> -Ensuring the proposal compliments the existing streetscape and the existing surrounding properties. -Retaining the existing amenity to the surrounding residences. -Providing a development that is compatible in terms of bulk, scale and height to surrounding properties. 	Yes
4.0-PRINCIPAL DEVELOPMENT STANDARDS		
4.3 Heights of Buildings 8.5m	<8.5m.	Yes
4.4 Floor Space Ratio (0.45:1) GFA: 274.7m ²	0.47:1 (GFA-287.76m ²) -4.7%	No Clause 4.6 Variation
4.6 Exceptions to Development Standards	The proposal seeks Clause 4.6 exception to development standard requests to Clauses 4.3 and 4.4 of MLEP 2013.	Refer Appendix 1 for Clause 4.6 Request
5.0-MISCELLANEOUS PROVISIONS		
5.9 Preservation of trees and vegetation	Repealed.	Yes
5.10 Heritage Conservation	The site does not contain any European heritage items and is not in the vicinity of surrounding heritage items or in a heritage conservation area.	Yes
6.0-ADDITIONAL LOCAL PROVISIONS		
6.1 Acid Sulfate Soils	The site is not mapped with acid sulfate soils.	Yes
6.2 Earthworks	The proposal involves the excavation of approximately max 800mm and the use of dropped edge beam. It is not foreseen to have any adverse impacts upon the natural environment or adjoining properties.	Yes

6.3 Flood Planning	The site is not mapped as flood prone land.	Yes
6.8 Landslip Risk	The site is not mapped in a landslip risk area	Yes

Table 1-Manly LEP 2013

4.5 Manly Development Control Plan 2013

The Manly DCP 2013 applies to all land where the MLEP 2013 applies. Therefore, the DCP applies to the subject development.

Part 3 provides general principles applying to all development and Part 4 outlines development controls for specific forms of development including residential and Part 5 provides for special character areas. The relevant provisions of **Part 3** are summarised below:

Clause 3.1.1 – Streetscape (Residential Areas)

The intended outcomes are noted as:

- i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
- v) *address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
- vi) *visually im*
- vii) *prove existing streetscapes through innovative design solutions; and*
- viii) *Incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design*

It is considered that the proposal provides for a dwelling that is compatible with the existing and envisaged streetscape.

The new works will be compatible with the style and form of the surrounding dwellings by providing for a two (2) storey frontage to the street with a conventional pitched roof and as such will respect Council's residential streetscape controls. The dwelling will not appear as bulky and excessive to the locality.

Clause 3.1.1.3 - Roofs and Dormer Windows

The proposed pitch roof style will be complementary to the style and scale of the existing surrounding development and future envisaged development. The proposed roof form is not dissimilar to surrounding properties and as such is considered acceptable.

Clause 3.3 - Landscaping

The proposal provides for 358m² (59%) of soft landscaped area on the site and as such is considered acceptable.

Clause 3.4 - Amenity (Views, Overshadowing, Overlooking/Privacy, Noise)

The objectives of the clause are noted as:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

It is suggested that the works will achieve these objectives as:

The proposed design will not adversely impact on privacy, views, solar access and general amenity of adjoining and nearby properties.

The proposal dwelling has been designed to minimise overlooking opportunities and visual privacy impacts upon adjoining properties via careful siting of windows to ensure no direct overlooking of windows in adjoining dwellings.

The proposal will not result in any significant overshadowing to the adjoining properties. The site and all adjoining properties will continue to receive in excess of 3 hours of solar access on the winter solstice.

Clause 3.5 – Sustainability

A BASIX Certificate has been prepared to support the new works and confirm that the dwelling will achieve the appropriate thermal performance criteria.

Clause 3.7 - Stormwater Management

The proposal allows for stormwater disposal in accordance with the concept stormwater plan prepared by Nastasi & Associates Consulting Engineers which provides for all collected stormwater being discharged to an OSD tank in the rear of the site and then to the front in accordance with the Manly Specification for Stormwater Drainage 2003.

The proposal has been assessed against the MDCP (2013) as demonstrated below in **Table 2**:

MANLY DEVELOPMENT CONTROL PLAN 2013-Part 4			
CONTROLS	REQUIRED	PROVIDED	COMPLIANCE
Site Area: 500m ²			
Residential Density – Area D5	500m ² of site area per dwelling	610.5m ² of site area per dwelling	Yes

Height	2 storey	2 storey	Yes
Wall Height	7.2m-1:9 slope building is 7.025m.	Max wall height at SE corner-7.025m ² North-5.9m South- 6.13m	Yes
Roof height above WP	2.5m	2.04m	Yes
FSR (0.45:1)	0.45:1 (274.725m ²)	0.47:1 (287.76m ²)	No Clause 4.6 Variation Required
Front setback	6.0m or streetscape	5.49m Consistent with adjoining southern dwelling at No. 50 Grandview Grove and No. 6 Munoorra Street.	Yes with merit
South side setback	1.968m	Grd Fl-1.915m 1 st Fl-4.725m	Minor variation requested
North side setback	2.0m	Grd Fl- 6.0m & 4.68m to alfresco 1 st Fl- 6.1m	Yes Yes
Setback Rear	8.0m	5.85m from rear wall	No – Variation requested
Open space - total	55% (335.7m ²)	68% (418m ²)	Yes
Open space - soft (Landscaped area)	59% (358m ²)	>35%	Yes
Private Open Space	18m ²	>18m ²	Yes
Number of Endemic Trees	2 trees	>2 trees retained	Yes
Car Parking – Residents	2 spaces	2 spaces	Yes
Excavation	Generally 1m	Excavation to a depth of 800mm required outside building footprint.	Yes
Geotechnical Landslip Hazard	Geotechnical landslip area	No geotechnical assessment required.	Yes
Shadow-Adjacent POS	<1/3 additional shadow	<1/3 additional shadow	Yes
Adjoining NS orientation	2hrs sunlight retained to living room window	>2hrs sunlight retained	Yes

Table 2-Manly DCP 2013

Front Boundary setback

The proposed dwelling will have a front setback of 5.49m as measured from the front dwelling façade. The dwelling is setback behind the adjoining southern dwelling at No. 50 Grandview Grove and marginally in front of the adjoining northern dwelling at No. 6 Munoor Street. On this basis we believe that it satisfies the average of the two adjoining properties and is consistent with the streetscape. In addition, the proposal is highly articulated with a well-designed façade that will not add excessive bulk and scale. The depth of the site and topography constraints makes it impractical to push the dwelling even further back.

South Side Boundary setback

The proposed side boundary setback on the Southern side is 1.915m from the ground floor which does not comply with the required 1.968m as per Council's controls. However, we consider variation of this control reasonable and justified for the following reasons:

- The setback of 4.725m on the first floor level complies with Council's controls.
- The proposal complies with the side setbacks on the Northern side boundary.
- The non-compliance will not result in any visual privacy intrusions to the adjoining dwelling.
- The overshadowing complies with Council's controls and as such moving the building footprint will not significantly benefit the adjoining neighbours.
- The presence and intent to retain the substantial tree to the North of the site renders non-compliance on the South side difficult to rectify.

Rear Boundary setback

The proposal has a setback of 5.84m from the eastern rear boundary. However, we consider variation of this control reasonable and justified for the following reasons:

- A suitable area for private outdoor recreation is provided.
- The setback allows for an adequate level of separation to the dwelling on the adjoining eastern property.
- There is sufficient area for vegetation and mature trees including the required canopy tree and existing plantings.
- The non-compliance does not result in any adverse amenity impacts to adjoining properties.

The following numerical provisions of **Part 5** are considered relevant but not applicable to the proposal:

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	<u>Applicable</u>
Conservation Area	No

Foreshore Scenic Protection Area	No
Threatened Species and Critical Habitat	No
Flood Control Lots	No
Riparian Land and Watercourses	No
Road Widening	No
Gurney Crescent and Clavering Road, Seaforth	No

5.0 SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

(a)(i) – The Provisions of any Environmental Planning Instrument

Statutory assessment of the proposal has been previously addressed in Section 4.0. The site is zoned R2 Low Density Residential under Manly Local Environmental Plan 2013 and the proposal is permissible with development consent. As previously stated, the proposal seeks a Clause 4.6 Variation to the mapped FSR development standard of 0.45:1.

The proposal is also consistent with applicable State Planning policies.

(a)(ii) Any proposed Draft Environmental Planning Instrument subject of public consultation

There are no applicable Draft Planning instruments subject to public consultation.

(a)(iii) – The Provisions of any Development Control Plan

Also as discussed earlier in the report, the site is subject to assessment under Manly Development Control Plan 2013. The proposal generally complies with relevant objectives and controls which are detailed in Section 4.5 of this report.

(a)(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F

No planning agreement entered into.

(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

The proposal is consistent with relevant Regulations.

(a)(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

The site is not located within the coastal zone.

(b) – The likely impacts of that Development

It is considered that the development will provide for a new dwelling without any detrimental impact on the environment, social and economic status of the locality.

(c) – Suitability of the Site for Development

The site is of a suitable size and configuration to accommodate the proposed dwelling. The subject site is zoned R2 Low Density Residential and the construction of a new dwelling house in this zone is permissible

with the consent of Council. The resultant dwelling is of a bulk and scale that is consistent with the existing surrounding development.

On this basis, the site is considered suitable for the proposed development.

(d) – Any submissions made in accordance with this Act or Regulations

Any submissions received will be considered by Council.

(e) – Public Interest

The proposal will provide for housing needs of the community within a low density residential environment and is in the public interest.

6.0 CONCLUSION

The subject land is zoned R2 Low Density Residential under Manly Local Environmental Plan 2013 and the proposed dwelling is permissible with the consent of Council.

The proposal has an FSR of 0.47:1 (GFA-287.76²) and exceeds the mapped maximum floor space ratio (FSR) requirement for the site of 0.45:1 (287.76m²) under Clause 4.4 of MLEP 2013 by approximately 13m² which represents a relatively minor variation of 4.7%. Accordingly, a Clause 4.6 Exception to Development Standards request addressing the variation is submitted in support of the proposal. Refer Appendix 1.

The proposal is generally consistent with relevant matters for consideration under Manly Development Control Plan 2013 as previously addressed in this report with the exception of minor variations.

The application before the Council provides no unreasonable impacts to adjoining and adjacent residential properties. The proposed dwelling is also in keeping with the envisaged low-density residential character of the locality and no adverse amenity or environmental impacts are foreseen.

Accordingly, it is recommended that Council support the proposal and grant development consent subject to conditions of consent.

APPENDIX 1

CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS-(Clause 4.4-Floor Space Ratio)

Applicant: GJ Gardner Homes-Sydney North

Site Address: No.4 Munoorra Street, Seaforth

Proposal: Construction of new two (2) storey dwelling

Introduction

This request seeks a variation to Clause 4.4 of Manly Local Environmental Plan 2013, which relates to a 'Height of Buildings' development standard.

The submission has been prepared in support of a development application which proposes demolition of an existing dwelling and construction of a new two (2) storey dwelling on a site located at No.4 Munoorra Street, Seaforth.

Clause 4.6 (Exceptions to Development Standards) of Manly Local Environmental Plan 2013 is the mechanism available to applicants to seek a variation to a development standard. Clause 4.6 states the following:

"4.6 Exceptions to development standards

- 1) *The objectives of this clause are:*
 - a. *To provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
 - b. *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b. *That there are sufficient environmental planning grounds to justify contravening the development standard.*
- 4) *Consent must not be granted for development that contravenes a development standard unless:*

- a. *The consent authority is satisfied that:*
 - i. *The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - b. *The concurrence of the Director – General has been obtained.*
- 5) *In deciding whether to grant concurrence, the Director – General must consider:*
- a. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b. *The public benefit of maintaining the development standard, and*
 - c. *Any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- 6) *Consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone RU5 Large Lot Residential, Zone E2 Environmental Management or Zone E4 Environmental Living if:*
- a. *Subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - b. *The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by development standard.*
- 7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- 8) *This clause does not allow consent to be granted for development that would contravene any of the following:*
- a. *A development standard for complying development,*
 - b. *A development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies for the land on which such a building is situated,*
 - c. *Clause 5.4."*
 - ca. *Clause 6.4, 6.5, 6.6, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29 or 7.30.*

Planning Instrument

The Environmental Planning Instrument to which this variation relates is the Manly Local Environmental Plan 2013, as amended.

The subject site is zoned R2 Low Density Residential under the MLEP 2013.

Development Standard

The requirements of Clause 4.4-'*Floor Space Ratio*' is as follows:

4.4 Floor Space Ratio

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the **Floor Space Ratio Map**.*

The site is mapped with a maximum floor space ratio of 0.45:1 under Clause 4.4 of MLEP 2013. The proposed dwelling has a maximum FSR of 0.47:1 which is approximately 13m² (4.7%) larger than the mapped FSR requirement.

Justification for Variation of the Standard

Justification for the variation of the 'gross floor area' development standard contained under Clause 4.4 is established against the provisions of Clause 4.6, as follows:

1) The objectives of this clause are:

- a. To provide an appropriate degree of flexibility in applying certain development standards to particular development, and**
- b. To achieve better outcomes for and from development by allowing flexibility in particular circumstances.**

This submission seeks an exception to a development standard.

The site is mapped with a maximum '*floor space ratio*' development standard of 0.45:1. The proposed dwelling has a maximum FSR of 0.47:1 which is 13m² (4.7%) greater than the mapped FSR requirement of 0.45:1.

It is noted that the objectives of Clause 4.6 seek to recognise that in particular circumstances, strict application of development standards may be unreasonable or unnecessary. The clause provides a means by which a variation to the standard can be achieved.

Strict compliance would prove unreasonable in this case as the non-compliance with the floor space ratio standard will not generate unreasonable bulk or scale that will adversely impact the streetscape or amenity of adjoining properties. Therefore, it is in our opinion, that the extent of variation is appropriate in this instance.

In our opinion, given the above-mentioned reasons, the proposal is not likely to result in significant impacts on the surrounding area and flexibility with the development standard is considered reasonable.

- 2) ***Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.***

The exception is sought under subclause (2) to the mapped 'Floor Space Ratio' requirement of 0.45:1 under Clause 4.4 of Manly Local Environmental Plan 2013. Clause 4.4 is not excluded from the operation of this clause.

- 3) ***Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:***
- a. ***That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***
 - b. ***That there are sufficient environmental planning grounds to justify contravening the development standard.***

This submission forms the written request to Northern Beaches Council which justifies the contravention of the development standard for a maximum floor space ratio requirement of 0.45:1 on the mapped site that the subject land falls within under Clause 4.4. Clause 4.6(3)(a) requires the applicant to provide justification that strict compliance with the mapped 'Floor Space Ratio' requirement is unnecessary and unreasonable in the particular circumstances of the case.

We have considered *Wehbe v Pittwater Council* (2007) NSWLEC 827, *Preston CJ* which established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. The Court's recent decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 has altered the way the five tests ought be applied, requiring justification beyond compliance with the objectives of the development standard and the zone. That is, more than one of those five grounds is now arguably required to be made out.

It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason the development standard is unreasonable and unnecessary in this instance.

The relevant tests are considered below:

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

As indicated, this request seeks to vary the application of Clause 4.4 to the subject development. It is our opinion that the objectives of the floor space ratio development standard are satisfied, notwithstanding the non-compliance. In considering the variation we have given consideration to the objectives of Clause 4.4.

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment: The proposed development presents as a conventional two (2) storey dwelling to the street and does not contribute excessive massing or bulk and scale impacts to the streetscape. The facades of the dwelling are also suitably articulated utilising a variety of architectural elements and external materials that assist to minimise bulk and scale impacts.

It is considered that the proposed dwelling will make a positive contribution to the streetscape of Seaforth and is in keeping with the low density residential character of the area.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment: The proposal appears as a conventional two (2) storey dwelling when viewed from Munoora Street without any adverse bulk and scale or massing impacts. The proposal only marginally exceeds the mapped 0.45:1 floor space ratio of the site and will not obscure any important landscape or townscape features.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment: The proposed dwelling appears as a conventional two (2) storey dwelling and maintains an appropriate visual relationship with the low density streetscape and character of the surrounding area.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment: The proposal will not have any adverse environmental impacts upon the use or enjoyment of adjoining properties or the public domain.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment: Non-applicable.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

In our opinion, the underlying purpose of the development standard is to present a building that is compatible with the height, context and character of the locality, whilst preserving the amenity of adjoining properties.

In our opinion, the requirement to comply with the floor space development standard is unnecessary in this circumstance of the case as the bulk, scale and massing is compatible with surrounding dwellings in the immediate area and envisaged future dwellings. On this basis, it will not result in any significant adverse amenity impacts on neighbouring properties.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The non-compliance with the development standard will not be inconsistent with any planning objectives for the locality. The proposed development is a permissible use in the R2 Low Density Residential zone with consent and is also consistent with the objectives of the R2 Low Density Residential zone which are stated, inter alia:

- *To provide for the housing needs of the community within a low density residential environment.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Based on the objectives of the zone, it is in our opinion that the underlying purpose of the development standard is to present a building that is of a low density character, which preserves the natural features of the locality and is compatible with the bulk and scale, context and character of the neighbouring properties. As discussed in this report and the accompanying Statement of Environmental Effects Report, the proposal has been designed to maintain the amenity and desired future character of the area and be sympathetic to the natural features of the area. The contemporary residential development will contribute to the surrounding built form, maintaining the single and two storey presentations to Munoorra Street.

The dwelling has been carefully designed to accommodate the site's sloping topography and achieve a dwelling that is complementary to the streetscape. Therefore, it is considered unreasonable to adhere to strict compliance for this part of the building.

The development provides the subject site with a dwelling of high quality architectural design that will provide occupants with well-designed internal and external spaces in a desirable locality. The non-compliance with the gross floor area will not thwart the proposal's ability to meet the relevant zone objectives. Rather, it is considered that adhering to strict compliance would reduce the proposal from maximising the potential of the site and thus reduce the amenity of the dwelling. Accordingly, it is in our opinion that the non-compliance will not result in inconsistency with existing and future planning objectives for the locality.

On this basis, we consider that to apply the development standard would thwart the underlying standard.

Test 4 - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The Standard has not been virtually abandoned or destroyed. However, we are aware of other similar cases within Northern Beaches Council LGA boundaries where the development standard has been varied.

It is recognised that each DA is assessed on its own merits and each site has different characteristics. However, it is a relevant consideration to understand if the Council has accepted breaches to the mapped 'floor space ratio' standard in the past and under what circumstances the breach was supported and if indeed there are any comparable principles to the subject DA.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

In our opinion, the proposal satisfies the requirements of the 'unreasonable and unnecessary' tests established by the Court in *Wehbe*.

4) *Consent must not be granted for development that contravenes a development standard unless:*

a. *The consent authority is satisfied that:*

- i. *The applicant's written request has adequately addressed the matters required to demonstrated by subclause (3), and***
- ii. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and***

Again, it is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under subclause 3.

The applicant submits that the consent authority can and should be satisfied of each of these requirements for Clause 4.6(4), for all of the reasons set out in this request, and also having regard to the context of this particular site.

The dwelling has a conventional two (2) storey frontage and is consistent with the low density residential streetscape. It is also noted that there are a number of established two (2) storey dwellings in proximity of the site with consistent bulk and scale to the proposed dwelling. On this basis, the development maintains consistency with existing development currently in the streetscape and the desired future character of the locality which will progressively undergo more 2 storey construction. The proposal provides Munoorra Street with a contemporary building of high quality architectural design.

As indicated, it is in our opinion that the proposal is in the public interest. In accordance with Test 1 in Wehbe and Clause 4.6(4)(a)(ii) an assessment of the proposal against both the objectives of the standard and the zone is undertaken. The consideration of the objectives of the standard is set out in this submission and in our opinion, the proposal is consistent. A more detailed assessment of the proposal against the objectives of the zone is undertaken in the submitted SEE.

5) In deciding whether to grant concurrence, the Director-General must consider:

- a. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and**
- b. The public benefit of maintaining the development standard, and**
- c. Any other matters required to be taken into consideration by the Director – General before granting concurrence.**

It is considered that the variation sought raises no matter of significance for State or regional environmental planning.

In our opinion, the proposal is appropriate for the locality and strict compliance would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979.

For the reasons contained in the SEE and this submission, in our opinion, there are sufficient environmental planning grounds to justify varying the development standard. It is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed lot will allow for the creation of future residential development and as stated above meets the desired objectives of the standard.

- 6) Consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:**
 - a. The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or**
 - b. The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**

Non-applicable. On this basis the variation sought is not contrary to subclause (6).

- 7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).***

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

- 8) *This clause does not allow consent to be granted for development that would contravene any of the following:***
- a. *A development standard for complying development,***
 - b. *A development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,***
 - c. *Clause 5.4. ca. Clause 6.4, 6.5, 6.6, 6.7, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, or 7.36."***

This proposed development is not complying development.

The proposal is supported by a BASIX Certificate.

The development is not affected by clauses 6.4, 6.4, 6.5, 6.6, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29 or 7.30.