



## STATEMENT OF ENVIRONMENTAL EFFECTS

30 Fairlight Street Fairlight

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## Prepared for

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By



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# 1 Introduction

## 1.1 Background

This Statement of Environmental Effects (**SEE**) accompanies a Development Application (**DA**) seeking approval for demolition of the existing dwelling house and construction of a residential flat building containing five units above basement parking on the site known as Lot 50, DP 705739, No 30 Fairlight Street, Fairlight.

**Figure 1** below shows the land in yellow to which this DA for the construction of a residential flat building relates.



Source: Six Maps (27 September 2021)

**Figure 1** The site (yellow)

The site is located within the Sydney metropolitan area, a distance of approximately 9km north-east of the Sydney CBD and 800m from Manly Wharf. Sydney Road is located approximately 200m walking distance to the north of the site and provides access to regular City and Manly bus services and the Fairlight shops.

## 1.2 Purpose of report

This SEE has been structured to highlight the considerations that have resulted in the design and siting of the proposed development on the land. In doing so, the SEE provides a description of the site, its surrounds and background to the planning framework that has evolved for this area. This helps to identify the opportunities and constraints to which the proposed development will need to respond, commonly referred to as a site analysis.



The SEE then describes the proposed development and discusses how it addresses the relevant planning provisions of the Environmental Planning and Assessment Act 1979 as amended (**EP&A Act**), and relevant planning controls including State Environmental Planning Policies, Manly Local Environmental Plan (**LEP**) 2013 and Manly Development Control Plan 2013 (**DCP**). A Clause 4.6 request accompanies the SEE to address the variation to the maximum Floor Space Ratio (FSR) associated with the development of the site.

The SEE has been prepared in accordance with Schedule 1 of the *Environmental Planning & Assessment Regulation 2000* (**EP&A Regulation**) for the purposes of:

- demonstrating that the environmental impacts of the development have been considered; and
- outlining steps to be undertaken to protect the environment or to lessen any expected harm to the environment.

The SEE concludes that the proposed development is generally consistent with the relevant planning controls, has considered all environmental impacts, and should be granted consent subject to appropriate conditions.

### 1.3 Type of development application and submission requirements

The proposal constitutes 'development' in accordance with Part 4 of the EP&A Act for which Northern Beaches Council (**Council**) is the consent authority.

The DA is of a type identified in the Section 9.1 Direction from the Minister for Planning and Public Spaces dated 30 June 2020 entitled *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* which, when lodged at Northern Beaches Council, requires determination by the Local Planning Panel.

The DA is not Designated Development as defined in the EP&A Act, nor is it of a value that requires referral to the Sydney North Planning Panel.

The proposed development is not integrated development under Division 4.8 of the EP&A Act which requires a separate approval from any of the relevant integrated development approval authorities.





## 2 The Site and Planning Framework

This section of the report identifies the matters that underpin the siting, design and other planning considerations relevant to the development on the land, including:

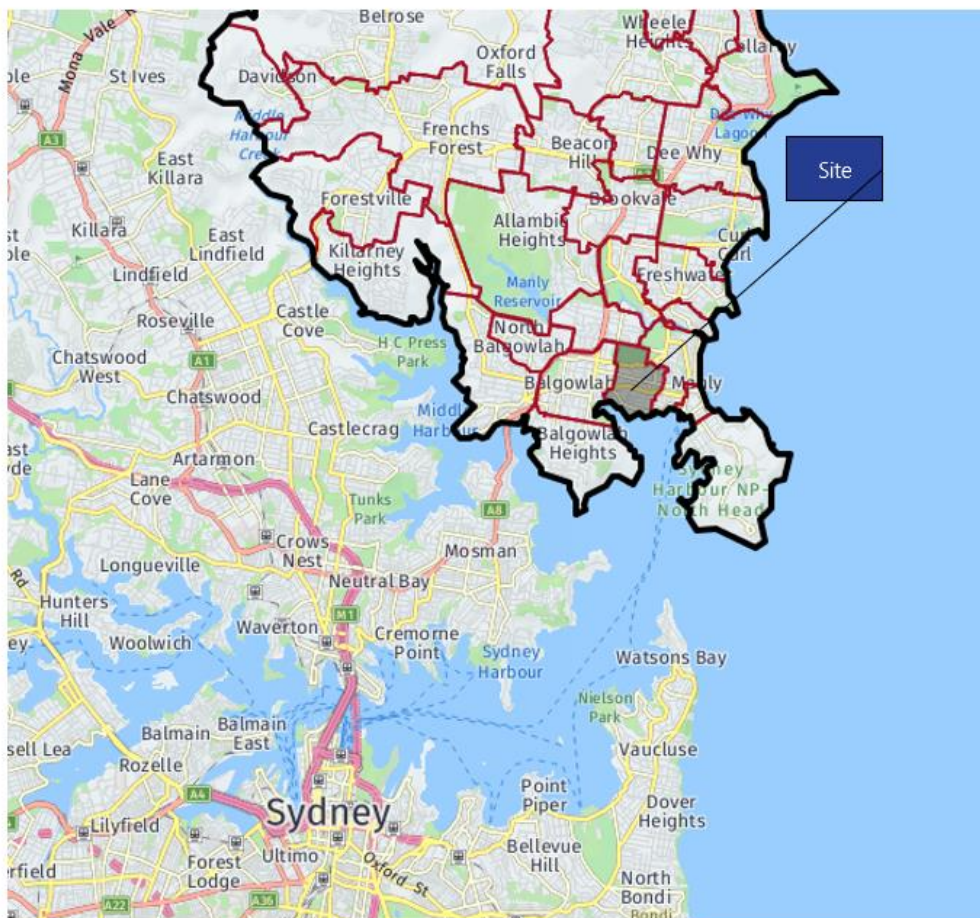
- the site and its physical context,
- the background and planning framework that has led to and supports the current DA

The considerations outlined in this section are summarised into a site analysis to inform and confirm the siting and design and environmental responses required to ensure the appropriate development outcomes for the land.

### 2.1 Site Location and Surrounding Development

The site is located in Fairlight within the former Manly portion of the Northern Beaches Local Government Area (**LGA**).

**Figure 2** shows the location of the site, relative to the southern portion of Northern Beaches LGA and the Sydney CBD.



Source: profileID.com.au

**Figure 2 Site Location**



The site is located approximately 200m walk to Sydney Road and the regular bus services to the City and Manly. The site has a road frontage to Fairlight Street and is located opposite the Margaret Street intersection. The built form in the neighbourhood predominately provides a mix of residential forms comprising dwelling houses, residential flat buildings of varying ages, heights and scales and townhouse style developments.

The legal description of the property is Lot 50, DP 705739, No 30 Fairlight Street, Fairlight. The site has a predominately north south axis and is rectangular in shape. **Figure 3** shows the site outlined in red.



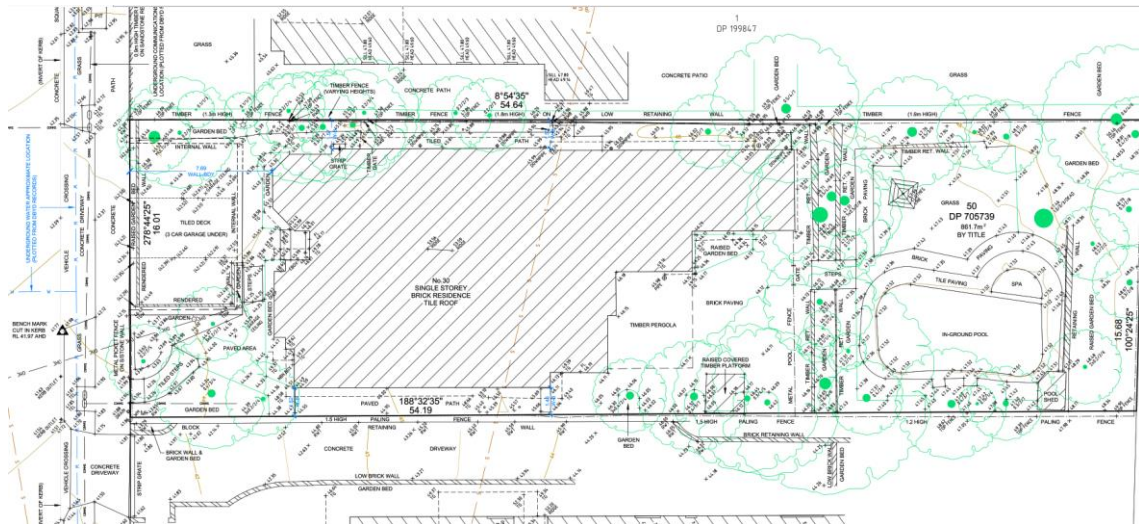
Source: Near Maps (as amended by GLN planning)

**Figure 3 Aerial photograph of the site and surrounds**

The existing development is a single dwelling house elevated above a street level garage structure on a nil setback to the front boundary. An existing terrace area is located above the existing garage. Pedestrian access is provided to the east of the garages. The existing dwelling is located on a 7.69m setback and is a single storey structure. To the rear of the existing dwelling is a terraced rear yard and swimming pool.

The location of the existing and adjoining structures relative to the boundaries is shown on **Figure 4** below.





Source: Extract Usher and Company Pty Ltd Survey Plan dated June 2021

#### Figure 4 Site Survey

The site has dimensions of 16.01m to Fairlight St, 15.68m wide at the rear boundary and approximately 54.6 depth. The site area is 861.7m<sup>2</sup>. The site falls from the north-west corner towards the eastern boundary at Fairlight St. The overall cross fall of the site from the north western corner to the south eastern corner is approximately 6.95m

The site is adjoined by a single residential dwelling house at No 32 Fairlight St of a similar age and construction to the subject site. No 32 Fairlight St is approximately 824m<sup>2</sup> with a 15m frontage.

In preparing this SEE, the site was inspected on 28 May 2021, as a result of the stay at home COVID health orders in place in Greater Sydney, Google Streetview images have been used to illustrate the adjoining and nearby development.



Source: GoogleStreetView

**Figure 5 View of subject site and adjoining development from Fairlight Street looking north**



Source: GoogleStreetView

**Figure 6 View from front of subject site looking south**



### 3 Proposed Development

The DA seeks approval for the construction of a residential flat building (**RFB**) containing 5 dwellings. Specifically, the proposed development includes the following components:

- Demolition of the existing dwelling house
- Site works including basement excavation.
- Construction of the residential flat building with lift access to all levels.

The RFB will provide for the following:

#### **Basement**

- 10 car parking spaces including one accessible, 2 visitor parking spaces one of which is a dual car wash bay.
- Bike storage and resident storage
- Externally accessible lift lobby
- Bin storage, plan and pump rooms

#### **Ground Floor**

- 2 x 3 bedroom units

#### **First Floor**

- 2 x 3 bedroom units

#### **Second Floor**

- 1 x 3 bedroom penthouse unit

**Figures 4 to 10** over the page provide the elevations of the proposed development.





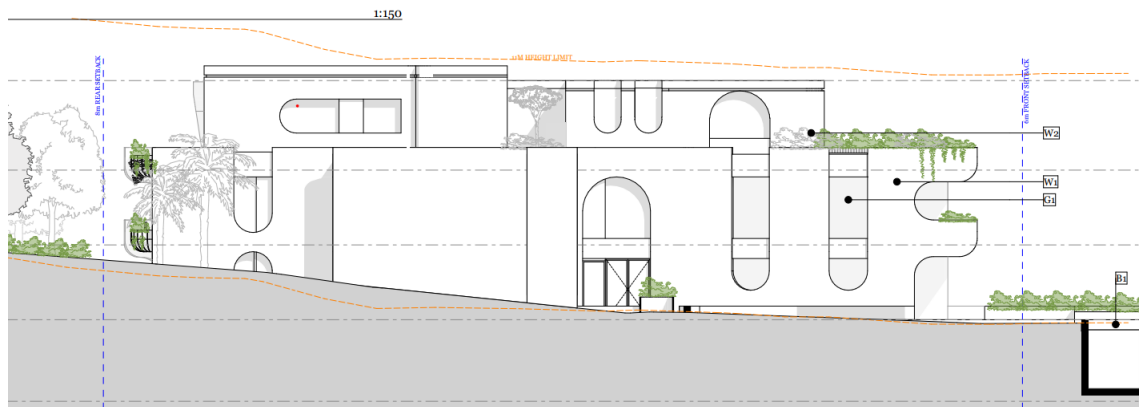
Source: DKO

**Figure 7** Fairlight Street (front) photomontage/render



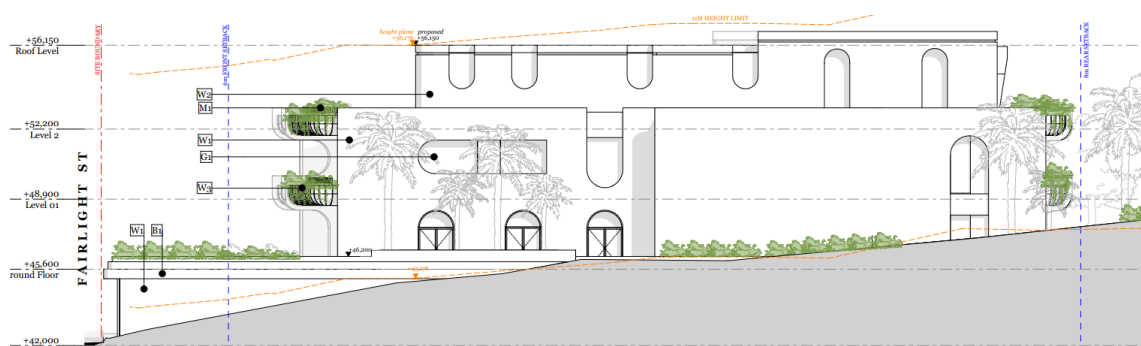
Source: DKO

**Figure 8** Rear photomontage/render



Source: DKO

**Figure 9 Western elevation**



Source: DKO

**Figure 10 Eastern Elevation**

The DA is supported by the following reports and plans as detailed in Table 1 below. Each supporting report is submitted with the DA on the NSW Planning Portal.

**Table 1 Supporting Plans and Reports**

Supporting Report/Plans	Prepared by	Ref and dated
Survey Plan	Usher & Company Pty Ltd	6348-DET June 2021
Architectural Package	DKO	Project No 12784 Rev A 12 October 2021
Stormwater/Civil Plans	itm design consulting engineers	H-DA-00, H-DA-01, H-DA-02 14/10/2021
SEPP 65 and ADG Report	DKO	Project No 12781 October 2021
Arboricultural Impact Assessment	Treeism	August 2021
Landscape Design Plans	Black Beetle Landscape Architecture and Design	LA LP 01/ 04, 02/04, 03/03, 040/03



Supporting Report/Plans	Prepared by	Ref and dated
Geotechnical Report	JK Geotechnical	342168rpt 12 July 2021
Traffic and Parking Report	Varga Traffic Planning	Ref 21315 13 October 2021
Heritage Impact Assessment	Phillips Weir Heritage	J5029 October 2021
NatHERs and BASIX	Ecomode Design	August 2021
DDA Capability Statement	Blackett Maguire & Goldsmith	15 October 2021
Waste Management Plan	Elephants Foot	Report No 3359 Rev D dated 14/10/2021
BCA Report	Blackett Maguire & Goldsmith	14 October 2021





## 4 Environmental Assessment

This section of the report assesses the proposed development against the planning considerations and detailed controls applicable to the site and the development, including:

- Threatened Species and Biodiversity Impacts (section 1.7 of the EP&A Act)
- Integrated development matters (section 4.46 of the EP&A Act)
- Bushfire prone land where no subdivision or special fire protection purpose is proposed (section 4.14 of the EP&A Act)
- Matters for consideration relating to DAs (section 4.15 of the EP&A Act)

### 4.1 Threatened Species

Section 1.7 of the EP & A Act requires consideration as to whether a proposed development will have a significant effect on threatened species, populations or ecological communities or their habitats. The existing landscaping associated with the dwelling house on the land does not comprise a threatened species nor are there biodiversity impacts in relation to the development of this site.

### 4.2 Integrated Development

Section 4.46 of the EP&A Act requires a review of whether the proposed development on the land would trigger an approval under other environmental or related legislation. Such development is categorised as 'integrated development'.

The following provides brief comments on whether any aspect of the development triggers a need for the consent authority to obtain general terms of an approval from the relevant approval bodies.

#### 4.2.1 Heritage Act 1977

No item listed on the State Heritage register is located on, or in close vicinity of the site and hence no integrated approval is required to address this legislation.

#### 4.2.2 Protection of the Environment Operations Act 1997

The implementation of appropriate environmental protection works will ensure that no licence will be required. No integrated approval is required to address this legislation.

#### 4.2.3 Roads Act 1993

Section 138 of the Roads Act 1993 requires an approval from the roads authority (either Council or the Roads and Maritime Services) for certain works in, on or over a public road, or to connect to a classified road.

The only works proposed is the relocation of the new driveway crossover to Fairlight Street. The Council is the Roads Authority in this instance and the relevant aspects would be assessed as part of the application. No referral to the RTA is required.



#### 4.2.4 Rural Fires Act 1997

Section 100B of the Rural Fires Act 1997 requires that a bush fire safety authority for a subdivision or for a 'special fire protection purpose' on bushfire prone land.

The site is not mapped as bush fire prone land.

#### 4.2.5 Water Management Act 2000

No activity approval is required to address the Water Management Act.

### 4.3 Other Matters for Consideration

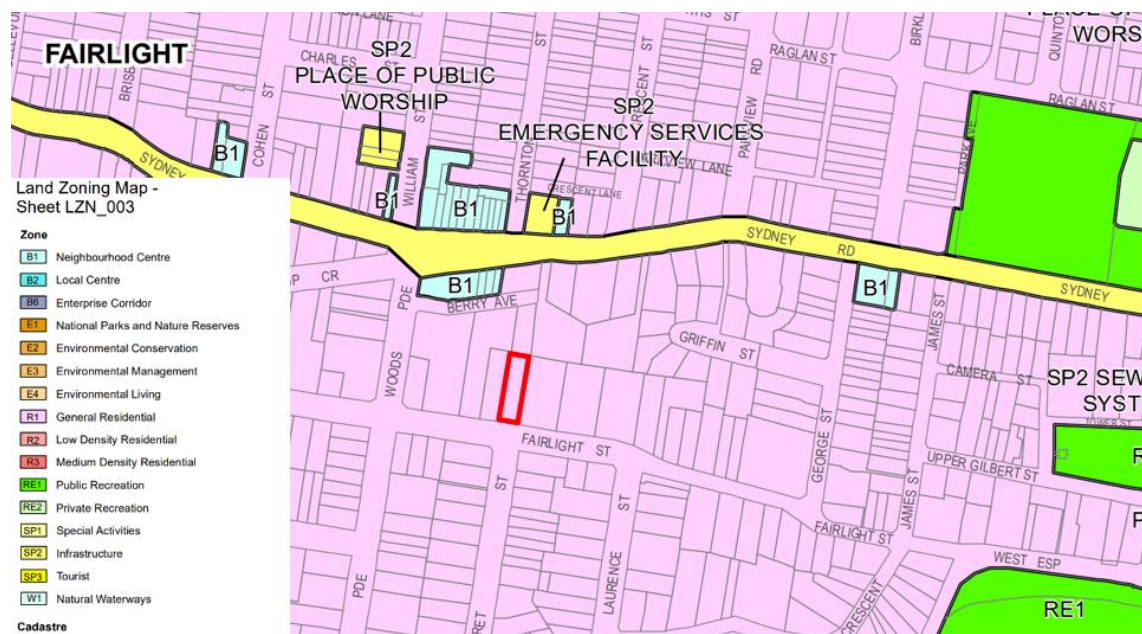
The EP&A Act outlines other matters for consideration when assessing and determining a development application as outlined below.

#### 4.3.1 Manly Local Environmental Plan

The site is within a R1 General Residential Zone under Manly LEP 2013. See **Figure 11**.

The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*



Source: [Land Zoning Map 3 MLEP](#)

**Figure 11 Extract of Zoning Map from Manly LEP 2013 (subject site in red)**



The R1 zone permits, with consent, a broad range of residential typologies consistent with the objectives including residential flat buildings as shown in the extract of the land use table below:

*Permitted with consent*

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Information and education facilities; Jetties; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Tank-based aquaculture; Water recreation structures; Water recycling facilities; Water supply systems*

The proposal is development for the purposes of 'residential flat buildings' which is permissible with development consent in the R1 General Residential Zone.

Residential flat building means *a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing.*

Manly LEP contains a number of controls that are relevant to the development of the site including:

Clause 2.7 Demolition development consent is sought for the demolition of the existing dwelling house and associated structures by this DA.

Clause 4.3 Height of Buildings – an 11m maximum height of building applies to the site, the proposed development achieves a maximum height of 10.974m.



Source: [HOB Map 3 Manly LEP](#)

**Figure 12 Extract of Height of Building Map from Manly LEP 2013 (subject site in red)**

Clause 4.4 Floor Space Ratio – the extract of the Floor Space Ratio extracted from Manly LEP identifies the land is shown "I" having an FSR of 0.75:1.







Source [FSR Map 3 Manly LEP](#)

**Figure 13 Extract of FSR Map from Manly LEP 2013 (subject site in red)**

The proposed development seeks a maximum FSR of 0.90:1. A Clause 4.6 variation request is submitted with this DA seeking variation of the development standard (**Appendix A**).

Clause 4.6 Exception to Development Standards - The Clause 4.6 Variation is contained in **Appendix A** of this SEE. Clause 4.6(4)(b) requires the concurrence of the Secretary of the NSW Department of Planning, Industry and Environment (**DPIE**). Planning Circular PS 20-002 issued 5 May 2020 enables the Local Planning Panel to assume the Secretary's concurrence under a clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006. Clause 4.6 of Manly LEP adopts the standard instrument and will enable the Local Planning Panel to assume concurrence of the Secretary when determining the DA.

Clause 5.9 Heritage Conservation - As identified on **Figure 14** below, 30 Fairlight St is located within the vicinity of local heritage items under Schedule 5, Part 1 of the LEP.



Source: [Heritage Map 3 Manly LEP](#)

**Figure 14 Extract of Height of Building Map from Manly LEP 2013 (subject site in red)**

A Heritage Impact Statement (**HIS**) prepared by Weir Phillips Heritage and Planning is submitted with this DA and addresses the relevant provisions of the LEP and DCP. The HIS concludes:

*The proposed new apartment building will have a minimal and acceptable impact on the setting of the heritage items because it is sufficiently separated from the item and will not block view corridors to and from the item or have any impact on its fabric. The proposed building is well-designed and will sympathetically relate to the style of the period while reading as contemporary in its materiality. The building will be unobtrusive in the setting of the item due to its neutral, plain colours and vegetation that will help to integrate it into the streetscape.*



*The proposed works fulfil the aims and objectives of the Manly LEP 2013 and the Manly DCP 2013 by improving the quality and diversity of accommodation in Fairlight while respecting the heritage significance of the area in which it lies*

**Clause 6.1 Acid Sulfate Soils** - Clause 6.1 of MLEP 2013 maps the site as Class 5 on the Acid Sulfate soils map. The DA is accompanied by a Geotechnical assessment report prepared by JKGeotechnics dated 12 July 2021 which did not identify the presence of acid sulfate soils. Accordingly, no further investigation is warranted. .

**Clause 6.2 Earthworks** - The Geotechnical assessment report prepared by JKGeotechnics dated 12 July 2021 submitted with this DA provides details of the necessary earthworks to facilitate the development. Subject to standard construction recommendations and conditions of consent, the requirements of the clause are satisfied.

**Clause 6.4 Stormwater Management** - The site falls to the street and stormwater management in accordance with Council's standard Engineering Requirements can be accommodated.

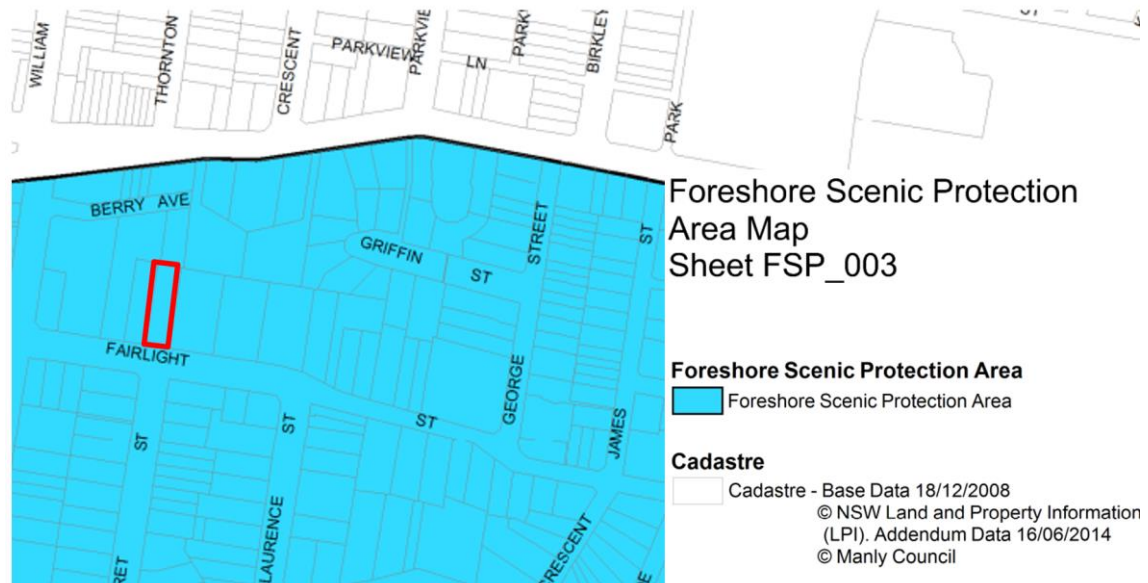
**Clause 6.9 Foreshore Scenic Protection Area** - The site is identified on the Foreshore Scenic Protection Area Map (see Figure 15 below. Clause 6.9(3) requires consideration the following matters:

- a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- b) *measures to protect and improve scenic qualities of the coastline,*
- c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

The proposed development will not result in any actual or perceivable impact on the Foreshore Scenic Protection Area because:

- the proposed development will not be discernible when viewed from Manly Cove, Middle Harbour or their immediate environs.
- The height, scale and architectural presentation of the proposed development are consistent or of a generally lesser built form of nearby development.

For these reasons, the proposed development will not give rise to any actual or perceived impact on the Foreshore Scenic Protection Area.



Source: [Foreshore Scenic Protection Area Map 3 Manly LEP](#)

**Figure 15 Extract Foreshore Scenic Protection Area Map**

**Clause 6.12 Essential Services** - All essential services and access are available to the subject site and proposed development.

#### 4.3.2 State Environmental Planning Policies

The following State Environmental Planning Policies apply or require discussion in relation to the assessment and determination of the application.

##### **State Environmental Planning Policy No 65 - Design of Residential Apartment Development and the Regulations**

This SEPP contains controls that, if met, cannot be used as grounds for refusal, including car parking provision, apartments sizes and ceiling heights. It also requires that the consent authority is to take into consideration:

- (a) *the advice (if any) obtained from the design review panel, and*
- (b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) *the Apartment Design Guide.*

In addition, Clause 50(1A) and (1B) of the Regulations requires a Statement from a qualified designer that must:

- (a) *verify that he or she designed, or directed the design, of the development, and*
- (b) *provide an explanation that verifies how the development—*
  - (i) *addresses how the design quality principles are achieved, and*



- (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.

The Design Verification Statement from the qualified designer is submitted with this DA.

The Apartment Design Guide (ADG) is broken into 4 parts. *Part 1 – Identifying the Context* and *Part 2 – Developing the Controls* provides advice on understanding the context when designing, examining strategic planning outcomes and setting future planning controls in locations where Councils wish to encourage apartments. *Part 3 – Siting the Development* and *Part 4 – Designing the Building* are expressly relevant to the assessment of the application.

**Table 2** below provides an assessment of the proposed residential flat buildings on the site against the relevant considerations in Parts 3 and 4 of the ADG.

**Table 2 ADG Requirements**

Reference	ADG requirements	Proposed Development	Compliance
Part 3 Siting the Development			
Site Analysis	Provide a site analysis including matters stipulated in Appendix 1 of the ADG	This SEE together with architectural plans and SEPP 65 and ADG Report submitted includes the matters flagged in Appendix 1 of the ADG.	Yes
Orientation	Buildings define the street  Limit overshadowing of neighbouring properties and orientate buildings at 90 degrees to boundaries	The building is oriented to the street in the same manner as the existing dwelling. All units within the proposed development address the street. The building is located centrally on the north-south oriented lot to minimise overshadowing and maximise solar access.	Yes
Public Domain Interface	Direct street access and overlook the public domain.  Planting softens edge of raised terraces and ancillary infrastructure is hidden	The building is oriented to the street in the same manner as the existing dwelling. All units within the proposed development address the street.  Landscaped planter beds are proposed to soften all balconies and the street presentation.	Yes
Communal Open Space	Communal open space comprises 25% of the site, with 50% of the area achieving a minimum of direct sunlight for 2 hours midwinter.	The smaller scale of the development provides the opportunity to provide larger private open space areas. In conjunction with the proximity to parks and beaches the open space needs of the residents will be met,	Yes
Deep Soil Zone	Deep soil zones will comprise a minimum 7% of the site area with a minimum dimension of 3m.	Required deep soil: 60 m <sup>2</sup> (7%) Proposed deep soil: 62.7 m <sup>2</sup> (7.3%)	Yes



Reference	ADG requirements	Proposed Development	Compliance
Visual Privacy	Separation between non habitable rooms of 3m.  Separation between habitable rooms and balconies of 6m. Ensure separation and privacy between public domain and communal spaces and private open space, window and habitable rooms	Minor incursions into 6m at ground and first floor level. Dwellings have been designed with openable habitable windows only to the front and rear of the site.	Intent of the controls achieved
Pedestrian Access	Multiple entries should be identifiable activate the street edge.	An identifiable pedestrian access consistent with the existing streetscape is proposed.	Yes
Vehicle Access	Vehicles access points should be minimised and designed for clear sight lines and to be separate from pedestrian access points. Garbage, loading and servicing areas should be screened.	Improved vehicle access provided enabling the reduction in the width of the driveway and all vehicles will enter and exit in a forward direction opposite the intersection of Fairlight St and Margaret St.	Yes
Bicycle and Car Parking	Carparking is required based on Manly DCP  Conveniently located and secure bicycle storage is to be required.	A total of 10 car parking spaces including 2 visitor parking spaces are proposed  Adequate storage areas are provided for each dwelling for bicycle storage  One visitor space is a dual carwash bay. The ground level car parking is concealed by a wall which is consistent with the existing streetscape.	Yes
<b>Part 4 Designing the Building</b>			
<b>Amenity</b>			
Solar and daylight access	Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter.	60% of apartments within the development achieve a minimum of 2 hours between 9am and 3pm in midwinter.	No - see (a) comment below.
Natural Ventilation	At least 60% of units are to be naturally cross ventilated.	All apartments are naturally cross-ventilated.	Yes
Ceiling Heights	For habitable rooms - 2.7m For non-habitable rooms - 2.4m	Elevations in all buildings comply with the 2.7m minimum ceiling height for habitable and 2.4m for non-habitable rooms..	Yes
Apartment Size and Layout	Apartments are required to have the following internal size:	All apartments exceed the 95m <sup>2</sup> ADG minimum internal areas for 3	Yes

Reference	ADG requirements	Proposed Development	Compliance
	<ul style="list-style-type: none"> <li>3 bedroom - 90m<sup>2</sup></li> </ul>	bedroom (2 bathrooms development.	
	Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height.	All habitable rooms comply.	Yes
	In open plan layouts the maximum habitable room depth is 8m from a window.	No room exceeds 8m depth.	Yes
	Master bedrooms are to have a minimum areas of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> .	>10m <sup>2</sup> proposed.	Yes
	Bedrooms must have a minimum dimension of 3m and must include built in wardrobes or space for freestanding wardrobes in addition to a 3m min dimension.	Complies	Yes
	Living rooms to have a minimum width of 4m for 2 and 3 bedroom apartments	All > 4m width	Yes
	Width of cross through apartments to be at least 4m	All > 4m width	Yes
Private Open Space and Balcony Areas	<p>The primary balcony is to be:</p> <ul style="list-style-type: none"> <li>3 bedroom - 12m<sup>2</sup> with a minimum depth of 2.4m</li> </ul> <p>For units at ground or podium levels, a private open space area of 15m<sup>2</sup> with a minimum depth of 3m is required.</p>	>12m <sup>2</sup> proposed, all ground floor units exceed 15m <sup>2</sup> .	Yes
	Primary balconies should be located to extend living space with longer side facing outwards and preferably orientated to the north, east or west.	All primary balconies are located adjacent to living rooms with the longer side facing outwards. The orientation of the balconies is a result of the north-south orientation and the outlook to the street and district and distant harbour views.	Yes
	Balconies are selected to contribute to the architectural merit of the building and are safe.	Balconies have been designed to contribute to the colour palette of the building and provide architectural relief.	Yes
Common Circulation and Spaces	The maximum number if apartments off a circulation core on a single level is eight.	The maximum number of apartments off a circulation core on a single level does not exceed two.	Yes

Reference	ADG requirements	Proposed Development	Compliance
	Circulation space well lit, avoid tight corners and corridors to simplify way finding. In large development incorporate common room.	Internal corridors are not required for the size and scale of the development. The external access and basement will be appropriately secure and lit.	Yes
Storage	Storage is to be provided as follows: <ul style="list-style-type: none"> <li>3+ bedrooms - 10m<sup>3</sup></li> </ul> At least 50% of the required storage is to be located within the apartment.	Provided within the unit and carpark to meet minimum requirements of 10m <sup>3</sup> .	Yes
Acoustic Privacy/ Noise and Pollution	Building siting, layout and materials respond to mitigate or address the impacts from noise sources.	All bedrooms are located to the rear of the site. The habitable spaces are located proximate to the street and lift to minimise acoustic impacts to other units within the development.	Yes
<b>Configuration</b>			
Apartment Mix	A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and stages of life.	There is no specific criteria included in the ADG. The development is small scale and will provide housing diversity within the locality.	Yes
Ground Floor Apartments	Street activity is maximised by direct access to the street from ground floor apartments, having doors and windows and elevated courtyards (1-1.5m above street level) face or adjacent to the street	All apartments in the proposed development have visual access to the street via elevated balconies. Apartments have windows facing the street.	Yes
Facades	Building facades provide visual interest and reflect the functions of the building.	The building facades are well articulated and the entry to lobby and garage are clearly defined.	Yes
Roof Design	Roof treatments are integrated into the building design and provide opportunity for community open space or sustainability features.	No rooftop access is proposed. The roof plant and lift overrun are integrated in the design and beneath the height limit.	Yes
Landscape Design	Landscaping is sustainable, accords with the micro-climate and species generally endemic and reach appropriate size at maturity.	All landscaping and planting opportunities have been considered by Black Beetle Landscape Architecture and Design to address these ADG requirements and role of plantings.	Yes
Planting on Structures	Plantings have sufficient soil depth and selection consider	Planting on structures have been considered by Black Beetle Landscape Architecture and Design	Yes

Reference	ADG requirements	Proposed Development	Compliance
	maintenance and the quality and amenity of the space.	The soil depth is achieved for the types of trees and plantings proposed.	
Universal Design	20% of apartments meet Liveable Housing Guidelines and provide adaptable and flexible apartments.	The proposal provides 1 adaptable unit in accordance with the ADG. It is noted that all apartments are provided within lift access.	Yes
Adaptive reuse	Not applicable	Not applicable	Not applicable
Mixed Use	Mixed Use buildings provide active frontages, definition of different areas, good security and communal open space at roof level.	Not applicable	Not applicable
Awnings and signage	Awnings complement the building and signage responds to street character	Not applicable	Not applicable
Energy Efficiency	Development incorporates passive environmental design	BASIX and NatHERs Certification is submitted within the application.	Yes
Water Management and conservation	Water efficient appliances and landscape is used and stormwater meets water sensitive urban design principles.	Appropriate water management is provided with the application.	Yes
Waste Management	Waste storage facilities are designed to minimise impacts and sized to enable source separation and recycling.	Waste storage is located in the basement. A Waste Management Plan is submitted with the application.	Yes
Building Maintenance	Building design provides weather protection, low maintenance materials and systems that enable ease of maintenance.	The buildings provide weather protection through overhanging balconies and the building will be constructed of low maintenance materials.	Yes

Notes to table:

a. Solar and daylight access

The proposal does not achieve 70% solar access to living rooms and balconies as a result of the site being south facing, and the large developments to the north of the site that overshadow the relatively small number of units within the development.

The ADG recognises that it may not be possible to achieve the 70% solar and daylight access design criteria on some sites. This ADG lists circumstances where the criteria will be difficult to achieve as follows:



- where greater residential amenity can be achieved along a busy road or rail line by orientating the living rooms away from the noise source
- on south facing sloping sites
- where significant views are oriented away from the desired aspect for direct sunlight

The subject site has context which brings these circumstances into play. The site is a south facing slope and the only open outlook, provides district and distant harbour views. The variation from this requirement is justified in this instance.

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

This SEPP requires residential development to be certified to meet sustainability targets for reduction in potable water consumption and energy efficiency. A BASIX report is submitted with this DA.

#### **State Environmental Planning Policy (Remediation of Land)**

The site has previously been used for residential purposes. There have been no contaminating activities undertaken on the land.

### **4.3.3 Draft Environmental Planning Instruments**

There are no draft environmental planning instruments affecting the land that have relevance to the consideration of this application.

### **4.3.4 Development Control Plan**

#### **Manly Development Control Plan (DCP)**

### **4.3.5 General Principles of Development**

#### **Streetscape Townscape**

The proposed development responds to the design principles contained in Clause 3.1.1 of Manly DCP and SEPP 65 and the ADG providing a built form that reflects and improves upon the existing streetscape. The Design Verification Statement provides an appropriate and detailed assessment.

#### **Residential Development Controls**

The main residential development controls in the DCP are summarised in **Table 3** below:

**Table 3 DCP Requirements**

Control	DCP Requirements	Proposed Development	Compliance
4.1.1.1 Residential Density and Dwelling Size	Density: 1 Dwg/150m <sup>2</sup>	1 dwelling.172m <sup>2</sup>	Yes
	3 bedroom dwg 90m <sup>2</sup> + 5m <sup>2</sup> additional bathrooms	3 bedroom dwellings 137m <sup>2</sup> to 179m <sup>2</sup>	Yes
	East	8.85m	Yes



Control	DCP Requirements	Proposed Development	Compliance
4.1.2.1 Wall Height	West	7.7m	Yes
4.1.2.2 Number of Storeys	3	3 habitable	Yes
4.1.2.3 Roof Height	<2.5m	0.5m flat roof	Yes
4.1.4.1 Street Front Setback	Prevailing	Garage Nil Balconies 3.5m Building 8.5m	Yes
4.1.4.2 Side Setback	East 1/3 wall height - 2.65m	2m to 3.08m	Yes to Openable windows
	West 1/3 wall height 2.31m	2m – 3.15m	Yes to Openable windows
4.1.4.4 Rear Setback	8m	10m	Yes
4.1.5.1 Min Open Space Requirements	Open Space 50% of site area	62% - 487.7m <sup>2</sup> (373.7m <sup>2</sup> Ground floor and 114m <sup>2</sup> above ground)	Yes
	Open Space above ground 40% of total open space	23% 114m <sup>2</sup>	Yes
4.1.5.2 Landscaped Area	Landscaped Area 30% of open space	215.2m <sup>2</sup> (146.31m <sup>2</sup> Required)	Yes
	Native Trees – 3	As indicated on Landscape Plan	Yes
4.1.5.3 Private Open Space	12m <sup>2</sup> per dwelling	Unit 1 - 79.3m <sup>2</sup> Unit 2 – 82.2m <sup>2</sup> Unit 3 - 16m <sup>2</sup> Unit 4 - 15m <sup>2</sup> Unit 5 – 50m <sup>2</sup>	Yes
4.1.6.1 Parking Design and location of garages	Maximum 50%of frontage up to 6.2m	<50% and 6.2m	Yes
Schedule 3 Parking and Access	Residential -8 spaces Visitor – 2 Spaces	Residential -8 spaces Visitor – 2 Spaces	Yes

### **Residential Density**



The subject site is located within Residential Density – Area D2 which prescribes a maximum density of 1 dwelling per 150m<sup>2</sup> of site area. This equates to a maximum density of 5.44 dwellings. The proposal is for 5 dwellings.

### **Height of Buildings**

The proposed building achieves compliance with the relevant controls relating to the maximum height of buildings and wall heights contained in both Manly LEP and DCP.

### **Floor Space Ratio**

The proposed development exceeds the maximum FSR as identified in Section 4.3.1 above and the attached Clause 4.6 variation request contained in **Appendix A**. The Clause 4.6 variation request addresses the relevant requirements of Manly LEP and relevant decisions of the NSW Land and Environment Court. The variation will not result in a building of greater height and bulk than anticipated by the applicable development controls and warrants the support of Council.

### **Setbacks**

As the site is a single parcel development site, the ability to achieve appropriate width for each unit, maximising the opportunities for cross ventilated units, a lesser setback is proposed adjacent to the central fire stairs. The reduced setback enables greater articulation of the east and west elevations with windows oriented to the front and rear. The upper 2<sup>nd</sup> floor is setback reducing the apparent bulk of the development from all facades as illustrated in the photomontages extracted in **Figures 16 and 17** below.



Source: DKO Plan No DA303A

**Figure 16** Photomontage looking west from Fairlight Street





Source: DKO Plan No DA304A

**Figure 177 Photomontage at pedestrian entrance viewed to the east on Fairlight St**

### **Open Space and Landscaping**

The proposed development is consistent with the numerical controls of Manly DCP for the provision of open space. The deep soil landscaped area is consistent with the requirements of the ADG. The ground floor units and penthouse are provided with greater landscaped private open space areas in addition to well located and designed terrace and balcony spaces. The development is located within walking distance of local open space areas and the small scale of the development does not allow for the provision of communal open space on the site without a reduction in either privacy of dwellings within the development or reduced outlook. In the circumstances it is considered that the proposed private open space and locality will meet the open space and recreational needs of the residents.

The landscape outcomes have been the subject of Arboricultural review and Landscape design in accordance with the objectives of Manly DCP. In accordance with the provisions of clause 3.3 of Manly DCP the application is accompanied by a landscape plan.

### **Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise)**

The north/south orientation of the proposed development results in the bulk of shadows cast in mid winter being over the front of the development site and Fairlight Street, minimising the loss of solar access to adjoining developments.

The combination of each unit having front and rear aspect and the design and location of the side elevations, windows and balcony design maximises the opportunities for solar access for each unit and minimises the potential for reduced privacy levels within and to adjoining developments.

The proposed development will not give rise to any loss of privacy to adjoining dwellings in Fairlight Street with the setbacks remaining consistent with the prevailing setback of adjoining development and their orientation to the south and district and distant harbour views. To the rear of the site, the adjoining residential flat buildings exceed the height limits (varying from 4 – 10 levels) of Manly LEP





and DCP and are located elevated towards the Sydney Road ridgeline. The overall height of the proposed development is consistent with the 11m height limit of Manly LEP and DCP.

Appropriate levels of acoustic privacy within and beyond the development will be achieved by location of bedrooms away from the lift, orientation of living areas and balconies towards the street frontages.

The building design incorporates landscape screening and architectural design including window placement and design to maximise visual privacy within and adjoining the development whilst maximising the available solar access for a south facing development impacted by existing development to the north which is constructed to a height greater than the existing controls.

### **Parking and Vehicular Access**

A Traffic and Parking Assessment prepared by Varga Traffic Planning is submitted with the DA. The existing dwelling has a three garage presentation to Fairlight Street, the proposed development will provide for a single entry point and enable all vehicles to enter and exit the site in a forward direction.

Parking is provided in accordance with the provisions of Manly DCP, providing 8 resident and 2 visitor parking spaces within the basement level. The resident spaces include an accessible space.

The reinstatement of kerb in place of the existing driveway will enable a marginal increase in the available on- street carparking spaces. Bicycle parking within the storage areas of the basement are provided to meet the 3 bicycle spaces required

The Traffic assessment finds that it is likely that the proposed development will result in a nett increase in the traffic generation potential of the site of approximately 2 vph during both the AM and PM peak hour, which will not have any adverse impacts on the road network capacity.

### **Sustainability**

A BASIX Certificate and NatHERs Certificate is submitted with the DA confirming compliance with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

The proposed design provides for passive solar design principles, thermal massing and achieved cross ventilation with tri aspect for 4 and quad aspect for the upper level penthouse.

### **Accessibility**

An accessibility compliance statement has been prepared by Blackett Maguire and Goldsmith and submitted with this DA confirming that subject to the identified measures being appropriately addressed by the project design team within the Construction Certificate, compliance with the provisions of the BCA and AS 1428.1 – 2009 can be readily achieved.

### **Waste Management**

A waste management plan has been prepared and submitted with the DA for Council's consideration. A well located bin area is proposed within the basement to meet the requirements of the development and Manly DCP.



### **Mechanical Plant Equipment**

Suitable areas for mechanical plant have been made available in the basement for necessary plant and equipment for the development. Standard conditions of consent can be imposed to address operational matters to ensure minimal impacts from the operation of required plant for adjoining and future residents of the development.

## **4.4 Planning Agreements and Development Contributions**

There are no planning agreements applicable to development of the site. Monetary contributions under the provisions of Northern Beaches Section 7.12 Contributions Plan 2019 will be payable at the adopted rate of 1% of the total development cost. A Cost Estimate has been prepared and submitted with the application to enable calculation of the contribution payable. A condition of development consent will ensure payment of the contributions as levied.

## **4.5 Likely impacts of the development**

Under Section 4.15 of the EP&A Act, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

The likely impacts of the proposed development have been addressed in the previous sections of this SEE

All matters can be satisfactorily addressed by standard conditions of development consent.

## **4.6 Suitability of the site**

This SEE and supporting reports indicates the site is capable of development in the manner proposed. The proposed development is permissible development designed to respond the applicable development controls of Manly LEP, DCP, SEPP 65 and ADG. Minor non-compliances in relation to FSR and setbacks are proposed as a response to providing residential dwellings of suitable quality and design to meet the needs of the future residents.

The site is one of two adjoining single residential dwellings capable of redevelopment. It is noted that Manly DCP does not provide for any provisions relating to amalgamation of land to provide for larger development sites nor a minimum development site area.

In the course of the preparation of this DA, the owner of No 28 Fairlight Street has been approached seeking to include the site as part of the redevelopment. The owner No 28 Fairlight Street is not prepared to consider sale or redevelopment of their home at this point in time. Whilst an amalgamated site may provide for an appropriate development site, development of each parcel independently remains consistent with the R1 General zoning of the site.

An approval of this DA would not preclude the ongoing use of the site as a dwelling house or other permissible development including a dual occupancy, multi housing development or similar scaled residential flat building as this DA.



The development proposal has been developed to minimise the potential overlooking of the adjoining properties with each dwelling oriented towards Fairlight Street and the district view available.

#### **4.7 Submissions**

The application will be notified in accordance with Council's adopted policy, should any submissions be received by Council throughout the course of the DA process, the Applicant would like the opportunity to respond.

#### **4.8 Public Interest**

The proposed development under this DA is in the public interest as it provides for the orderly and economic use of zoned residential land in a manner consistent with that of development within the locality.



## 5 Conclusion

This DA seeks approval for a residential apartment development located at 30 Fairlight Street, Fairlight.

The proposed development has been assessed against the relevant requirements of the EP&A Act, EP&A Regulations, Manly LEP and DCP, SEPP 65 and the ADG and has been found to be an acceptable development consistent with the existing and desired character of the locality. The DA is supported by the necessary expert reports and details to enable construction of the development in accordance with all relevant legislative requirements.

There are no measurable adverse impacts identified within this report as a result of the proposed development on surrounding lands or public expectations.

Based on the information contained in this SEE, the proposal should be granted consent subject to the appropriate conditions.



## APPENDIX A: CLAUSE 4.6 VARIATION





# CLAUSE 4.6 VARIATION TO FSR DEVELOPMENT STANDARD

30 Fairlight St Fairlight

Property	30 Fairlight Street, Fairlight																																																																																																																											
Development	The Development Application seeks approval for the construction of approval for residential flat building containing 5 units.																																																																																																																											
Subject Plans	<table><tr><th>Drawing No.</th><th>Drawing Name</th><th>Rev.</th></tr><tr><td>DA000</td><td>Cover Sheet</td><td>A</td></tr><tr><td>DA001</td><td>Development Summary</td><td>A</td></tr><tr><td>DA100</td><td>Site Photos</td><td>A</td></tr><tr><td>DA101</td><td>Site Analysis Plan 1/2</td><td>A</td></tr><tr><td>DA102</td><td>Site Analysis Plan 2/2</td><td>A</td></tr><tr><td>DA103</td><td>Existing Site Survey</td><td>A</td></tr><tr><td>DA104</td><td>Site Plan</td><td>A</td></tr><tr><td>DA105</td><td>Building Footprint Comparison</td><td>A</td></tr><tr><td>DA106</td><td>Demolition &amp; Excavation Plan</td><td>A</td></tr><tr><td>DA200</td><td>Basement Plan</td><td>A</td></tr><tr><td>DA201</td><td>Ground Level Plan</td><td>A</td></tr><tr><td>DA202</td><td>Level 1 Plan</td><td>A</td></tr><tr><td>DA203</td><td>Level 2 Plan</td><td>A</td></tr><tr><td>DA204</td><td>Roof Plan</td><td>A</td></tr><tr><td>DA300</td><td>Elevations - Sheet 1</td><td>A</td></tr><tr><td>DA301</td><td>Elevations - Sheet 2</td><td>A</td></tr><tr><td>DA302</td><td>Materials &amp; Finishes</td><td>A</td></tr><tr><td>DA303</td><td>Perspectives - Sheet 1</td><td>A</td></tr><tr><td>DA304</td><td>Perspectives - Sheet 2</td><td>A</td></tr><tr><td>DA305</td><td>Perspectives - Sheet 3</td><td>A</td></tr><tr><td>DA306</td><td>Perspectives - Sheet 4</td><td>A</td></tr><tr><td>DA400</td><td>Sections - Sheet 1</td><td>A</td></tr><tr><td>DA401</td><td>Sections - Sheet 2</td><td>A</td></tr><tr><td>DA500</td><td>Eye of the Sun</td><td>A</td></tr><tr><td>DA501</td><td>Shadows Study</td><td>A</td></tr><tr><td>DA502</td><td>Solar Access Calc.</td><td>A</td></tr><tr><td>DA503</td><td>Cross-Ventilation Calc</td><td>A</td></tr><tr><td>DA504</td><td>GFA Calc.</td><td>A</td></tr><tr><td>DA505</td><td>Deep Soil Calc.</td><td>A</td></tr><tr><td>DA506</td><td>Unit Mix Calc.</td><td>A</td></tr><tr><td>DA507</td><td>Adaptable Apartments</td><td>A</td></tr><tr><td>DA508</td><td>Adaptable Unit Layout</td><td>A</td></tr><tr><td>DA509</td><td>Livable Apartments</td><td>A</td></tr><tr><td>DA510</td><td>Livable Unit Layout</td><td>A</td></tr><tr><td>DA511</td><td>Height Plane Diagram</td><td>A</td></tr><tr><td>DA600</td><td>Site Isolation Scheme - Sheet 1</td><td>A</td></tr><tr><td>DA601</td><td>Site Isolation Scheme - Sheet 2</td><td>A</td></tr><tr><td>DA602</td><td>Site Isolation Scheme - Sheet 3</td><td>A</td></tr><tr><td>DA603</td><td>Site Isolation Scheme - Sheet 4</td><td>A</td></tr><tr><td>DA604</td><td>Site Isolation Scheme - Sheet 5</td><td>A</td></tr></table>	Drawing No.	Drawing Name	Rev.	DA000	Cover Sheet	A	DA001	Development Summary	A	DA100	Site Photos	A	DA101	Site Analysis Plan 1/2	A	DA102	Site Analysis Plan 2/2	A	DA103	Existing Site Survey	A	DA104	Site Plan	A	DA105	Building Footprint Comparison	A	DA106	Demolition & Excavation Plan	A	DA200	Basement Plan	A	DA201	Ground Level Plan	A	DA202	Level 1 Plan	A	DA203	Level 2 Plan	A	DA204	Roof Plan	A	DA300	Elevations - Sheet 1	A	DA301	Elevations - Sheet 2	A	DA302	Materials & Finishes	A	DA303	Perspectives - Sheet 1	A	DA304	Perspectives - Sheet 2	A	DA305	Perspectives - Sheet 3	A	DA306	Perspectives - Sheet 4	A	DA400	Sections - Sheet 1	A	DA401	Sections - Sheet 2	A	DA500	Eye of the Sun	A	DA501	Shadows Study	A	DA502	Solar Access Calc.	A	DA503	Cross-Ventilation Calc	A	DA504	GFA Calc.	A	DA505	Deep Soil Calc.	A	DA506	Unit Mix Calc.	A	DA507	Adaptable Apartments	A	DA508	Adaptable Unit Layout	A	DA509	Livable Apartments	A	DA510	Livable Unit Layout	A	DA511	Height Plane Diagram	A	DA600	Site Isolation Scheme - Sheet 1	A	DA601	Site Isolation Scheme - Sheet 2	A	DA602	Site Isolation Scheme - Sheet 3	A	DA603	Site Isolation Scheme - Sheet 4	A	DA604	Site Isolation Scheme - Sheet 5	A
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Development Standard	Clause 4.3 Height of buildings of Manly Local Environmental Plan 2013 (Manly LEP)																																																																																																																											



## 1. Summary

The proposed development involves the construction

Figure 1 shows the site configuration as outlined in red.



Source: Nearmap (as amended by GLN planning)

**Figure 1** Aerial photograph of the site and surrounds

## 2 Authority to vary a development standard

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 objectives and a means by which a variation to the standard can be achieved as outlined below.

### 4.6 *Exceptions to development standards*

- 1) *The objectives of this clause are as follows—*
  - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development;*
  - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development 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) *Development 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) Development 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 Planning Secretary has been obtained.*
- 5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.*
- 6) Development 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 Primary Production Small Lots, 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.*

**Note—**

*When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.*

- 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 development 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 6.15,*
  - cb. a development standard on land to which clause 6.19 applies.*

### 3 Development Standard to be Varied

A variation is requested to clause 4.4 which specifies the Floor Space Ratio (**FSR**) of buildings. This is a development standard as defined by s.1.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

Clause 4.4 (2) requires:

- (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.*

An extract of the Floor Space Ratio Map contained within the LEP is provided as **Figure 2**.

Clause 4.5 of the LEP outlines how to calculate the FSR of the building and subclause 4.5(2) relevantly provides the following definition:

- (2) *Definition of "floor space ratio" The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*



Source [FSR Map 3 Manly LEP](#) (as amended by GLN planning)

**Figure 2 Extract of FSR Map from Manly LEP 2013 (subject site in red)**

The LEP Dictionary provides the following definition:

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—



- a) *the area of a mezzanine, and*
- b) *habitable rooms in a basement or an attic, and*
- c) *any shop, auditorium, cinema, and the like, in a basement or attic, but excludes—*
- d) *any area for common vertical circulation, such as lifts and stairs, and*
- e) *any basement—*
  - i. *storage, and*
  - ii. *vehicular access, loading areas, garbage and services, and*
- f) *plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- g) *car parking to meet any requirements of the consent authority (including access to that car parking), and*
- h) *any space used for the loading or unloading of goods (including access to it), and*
- i) *terraces and balconies with outer walls less than 1.4 metres high, and*
- j) *voids above a floor at the level of a storey or storey above.*

That site survey (Usher and Co dated 12/10/2021 provided with the development application shows that the area of the site is 861.7m<sup>2</sup>, which accords with the site area to be taken into account in calculating the FSR as required by subclause 4.5(3) of the LEP.

## 4 Extent of Variation

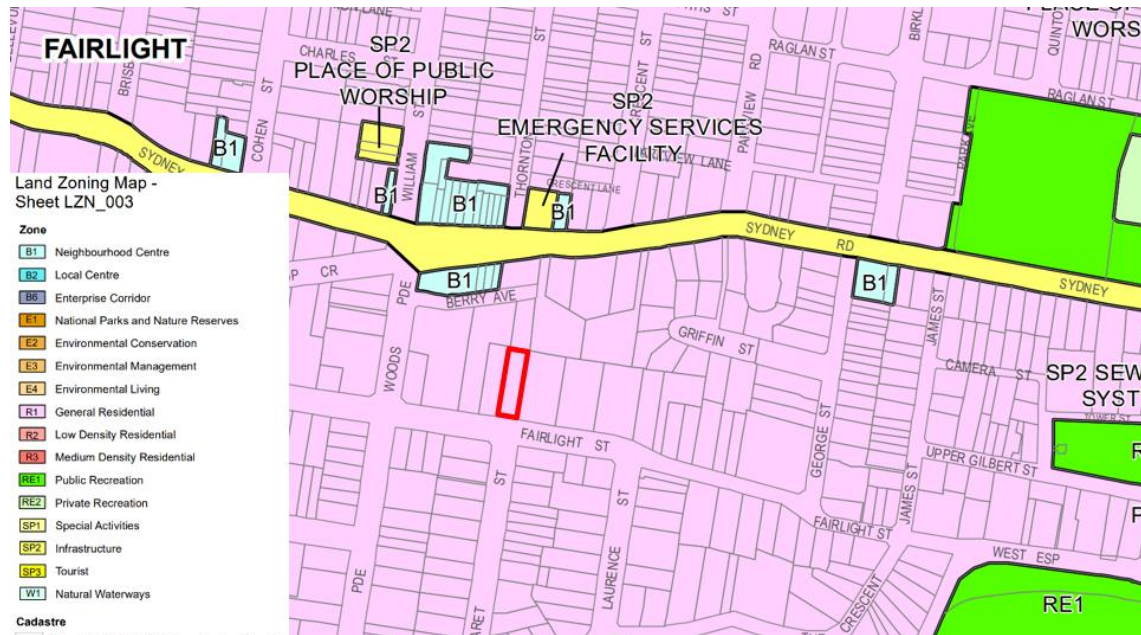
The architectural plans (DA504A dated 12 October 2021) delineate that part of each floor that accords with the definition of gross floor area (**GFA**). In summary, the GFA of each level of the proposed building is:

- Basement 19m<sup>2</sup>
- Ground 290m<sup>2</sup>
- Level 1 286m<sup>2</sup>
- Level 2 184m<sup>2</sup>
- **TOTAL 779m<sup>2</sup>**

The site area of 861.7m<sup>2</sup> and the applicable 0.75:1 FSR standard provides a compliant GFA of 646.275m<sup>2</sup>. The GFA of the proposal is 779m<sup>2</sup>, that is an FSR of 0.90:1 and GFA exceedance of 132.725m<sup>2</sup> (20.5%).

## 5. Zoning

The zoning of the site and surrounding area is illustrated on **Figure 3** below.



Source: [Land Zoning Map 3 MLEP](#)

**Figure 3 Extract of Zoning Map from Manly LEP 2013 (subject site in red)**

The objectives of the R1 zone are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

## 6. Objectives of Clause 4.4

The objectives of the FSR clause are:

- a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- 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,
- c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and 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.

Clause 4.6(3) requires the consent authority to consider a written request that demonstrates (amongst other things) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. When determining whether compliance with the standard is "unreasonable or unnecessary", it is usual to consider the Objectives of the clause relevant to the development standard. The Objectives of clause 4.3 are considered further below.

## 7. Assessment

The following sections discuss the grounds for the variation to clause 4.4 against the relevant provisions of clause 4.6.

### **Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6(3)(a))**

Clause 4.6(3)(a) requires the applicant to provide justification that strict compliance with the maximum FSR development standard is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council* (2007) NSWLEC 827, Preston CJ established five potential ways for determining whether a development standard could be considered to be unreasonable or unnecessary. These include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

We note that whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6. Regard is also had to the Court's decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 and *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which elaborated on how these five ways ought to be applied, requiring justification beyond compliance with the objectives of the development standard and the zone.

In addition to the above, Preston CJ further clarified the appropriate tests for a consideration of a request to vary a development standard in accordance with clause 4.6 in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. This decision clarifies a number of matters including that:

- the five ways to be satisfied about whether to invoke clause 4.6 as outlined in *Wehbe* are not exhaustive (merely the most commonly invoked ways);
- it may be sufficient to establish only one way;
- the written request must be "sufficient" to justify contravening the development standard; and
- it is not necessary for a non-compliant development to have a neutral or beneficial effect relative to a compliant development.



It is our opinion that the proposal satisfies at least one of the five ways established in *Wehbe* that demonstrate that the development standard is unreasonable and unnecessary in this instance, for the reasons set out below.

**1st Way – The objectives of the standard are achieved notwithstanding non-compliance with the standard**

The proposal would satisfy the objectives of the standard to the extent relevant to the proposal, and compliance with the FSR standard in this circumstance is considered both unreasonable and unnecessary for the reasons outlined below.

**Objective (a) - to ensure the bulk and scale of development is consistent with the existing and desired streetscape character.**

The existing and surrounding development is a mix of small and large scale developments which do not directly reflect the underlying development standards contained in Manly LEP. To the rear of the site are residential flat buildings that present at 8 (maximum) storeys at street level and XX levels at the rear of the subject site. Opposite and nearby to the site are existing residential flat buildings of 3 to 4 levels.

The proposed development is a building of 3 habitable levels within the 11m height limit as is anticipated by Manly LEP and DCP. The architectural treatment of the proposal provides for balconies on the street frontage and the building is located above the existing garage level on a greater than the minimum 6m setback which reduces the apparent bulk of the building as compared to other adjoining and near by developments. The density of the development is consistent with the provisions of Manly DCP. The proposed development is considered consistent with the existing and desired scale of the area.

**Objective (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.**

The site is not in a location that enjoys access to specific important landscape and townscape features. There is an outlook enjoyed toward distant harbour glimpses and more general district views afforded by the location of the site on the upper levels associated with the ridgeline along which Sydney Road runs.

As discussed earlier and within the SEE, the density and height of the development is consistent with the anticipated built form under Manly LEP and DCP and consistent with the building alignments and scale of the nearby and adjoining properties.

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

The existing streetscape of Fairlight Street is a mix of older and newer development styles. The existing dwelling house presents as a three car width garage and gate on a nil setback. The proposed architectural treatment of the elevated nature of the site will provide for a reduced dominant visual presentation of the carparking from that of the existing development.

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

The development has been designed to respond to the objectives and development controls of State Environmental Planning Policy No. 65, Apartment Design Guide Manly LEP and DCP. The proposal will achieve an appropriate level of solar access, privacy and outlook. The proposal will not give rise to any impacts that are either not anticipated within a residential development and can be the subject of appropriate conditions of development consent.

**Objective (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.**

This objective is not relevant but will not be hindered as a consequence of the proposed FSR variation.

### **Summary of Satisfaction of Objectives of the Standard**

Preston CJ at paragraph 43 in *Wehbe v Pittwater Council* stated:

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)." (paragraph 43 of Wehbe v Pittwater Council).*

There is an expectation for development to achieve an appropriate scale and density. This will be achieved by the proposed development. The development of the site is of a height and scale that is anticipated and will not have any unacceptable environmental or amenity impacts. Accordingly, the variation to maximum FSR standard will not compromise achievement of the objectives of the standard. Rather, this proposal offers an alternative means of achieving the objective.

**2<sup>nd</sup> Way - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

Other than objective (a) to the extent discussed above, this consideration is not relevant in this case.

**3<sup>rd</sup> Way - The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.**

This consideration is not relevant in this case, other than as commented on with regard to the "1<sup>st</sup> way."

**4<sup>th</sup> Way - The development standard has been virtually abandoned or destroyed by the Council's own decisions**

As noted above, Council has previously varied the standard on several occasions.

**5<sup>th</sup> Way – The zoning of the site is unreasonable or inappropriate and consequently so is the development standard.**

This consideration is not relevant in this case.



**Are there sufficient environmental planning grounds to justify contravening the development standard? (Clause 4.6(3)(b))**

The environmental planning grounds which support the contravention of the FSR of building standard relate to:

- A component of the additional floorspace (19m<sup>2</sup> for the foyer) is contained in a basement level that has no implications in regard to the size and scale of the building.
- XXXX
- In addition to the above, there is an absence of material negative impacts resulting from the proposed variation from the FSR standard.

**Is the proposed development in the public interest? (Clause 4.6(4)(a)(ii))**

The proposed development is in the public interest because it:

- Facilitates a development that is consistent with the objectives of the standard and the intent of the R1 zone under Manly LEP Consistency, with the objectives of the standard has been addressed previously under Wehbe method one ("1st way").
- Provides additional housing within the Sydney metropolitan region.
- The form of the proposed development is a permissible development achieving compliance with the built form controls of Manly LEP and DCP.
- The future occupants of the proposed development will have access to the existing facilities both built, infrastructure and environmental of the Fairlight locality.

In regard to the first point, the objectives of the *R1 General Residential* zoning of the site are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development is consistent with, or is not antipathetic to, the objectives of the zone for the reasons discussed above and below.

The proposed development will contribute to the delivery of about 5 new dwellings to provide alternative housing choice for the future residents. The proposal provides 3 bedroom residential apartment sizes and will form part of a housing mix within the R1 residential zone. Each dwelling provides a housing choice not readily available within the existing housing stock of Fairlight enabling a delivery of a small scale development containing 5 x 3 bedroom dwelling, each accessible via a lift, located in a landscaped setting with reduced maintenance responsibilities and improved affordability as compared to a single residential dwelling house within the locality.

The third objective is irrelevant, and the proposal is not antipathetic to this objective.

**Consideration of concurrence by Director-General (Clause 4.6(4)(b) & (5))**

Concurrence to the proposed variation is not required by the Secretary pursuant to clause 4.6(4)(b), as we understand that the relevant consent authority has the necessary delegation as set out in the Assumed Concurrence Notice issued by the Secretary of the Department of Planning and



Environment dated 21 February 2018 (attached to DPE Planning Circular PS 20-002 dated 5 May 2020).

Despite this, the proposed variation to the maximum FSR standard is not considered to be detrimental to any matters of significance for state or regional environmental planning.

In the circumstances of the application, there is no public benefit in maintaining the development standard. To the contrary and consistent with the objectives of clause 4.6, allowing the variation will facilitate a development that achieves better and appropriate outcomes and represents an appropriate degree of flexibility in applying a development standard.

In relation to clause 4.6(5)(c), we note that no other matters have been nominated by the Secretary for consideration.

## **8. Conclusion**

A variation to the strict application of Council's maximum FSR standard is considered appropriate for development of Lot 50, DP 705739, No 30 Fairlight Street, Fairlight.

The proposed FSR results in an optimum outcome for the site that provides alternative residential development, with negligible impacts compared to those caused by a compliant FSR.

The proposal meets the intent of the floor space ratio standard and in accordance with clause 4.6 of Manly LEP, demonstrates that the development standard is unreasonable and unnecessary in this case and that the variation is justified.