



*Planning Direction Pty. Ltd.*  
*Town Planning & Development Services*

# **STATEMENT OF ENVIRONMENTAL EFFECTS**

**Proposed Alterations and Upper Level  
Addition to an Existing Dwelling**

**at**

**No 18 Jenner Street Seaforth**

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## 1.0 INTRODUCTION

This statement of environmental effects has been prepared to accompany a development application that is being submitted to Northern Beaches Council.

As a matter of background, development No DA2019/1135 was approved by Council 29th November 2019 to undertake alterations and additions to a dwelling house. Upon review of the approved plans by industry professionals and builders (despite achieving numerical compliance with Council's development controls), it has been determined that a better planning outcome for the site can be derived without impinging on neighbour amenity.

The applicant seeks therefore, to gain development consent for an amended design on the subject site known as No 18 Jenner Street Seaforth involving the following works:

- Demolish an existing upper level; and
- Construct an upper level addition comprising of:
  - A master bedroom with a walk-in robe and ensuite. A street facing balcony is also proposed to service the main bedroom;
  - A living room and a bathroom;
  - Two additional bedrooms with built-in cupboards; and
  - Internal staircase accessing lower level.
- Alterations to the ground floor of the existing dwelling include:
  - A new entry portico and front steps;
  - Removal of some internal walls to create an open plan living and dining area;
  - A new kitchen and laundry;
  - A new roof over the existing rear patio;
  - Retain the approved carport in the design; and
  - Install an internal staircase accessing the upper.

The proposal has been prepared pursuant to the provisions of Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013. This statement of environmental effects is intended to assist Northern

Beaches Council in its assessment of the development application and includes;

A description of the site and the locality and a description of the proposed development. A description of the statutory framework in which the development application will be assessed inclusive of the local planning instruments and the provisions of the Environmental Planning and Assessment Act 1979; and Conclusions in respect of the proposed development.

This statement of environmental effects should be considered in conjunction with the development plans prepared by *Add Style Home Additions*.

## 2.0 SITE AND CONTEXT

### 2.1 Subject Site

The subject site is situated on the northern side of Jenner Street and is known as No 18 Jenner Street Seaforth.



#### Locality Plan

The subject site is legally identified as Lot C in Deposited Plan 90826.

The subject site is regular in configuration with the frontage and width of 13.34m and a depth of 56m.

The subject site has a total area of approximately **748.6m<sup>2</sup>**. A survey plan is included with the development plans.

Existing improvements on the subject site consist of a 1 and 2 storey brick rendered dwelling with a pool in the rear yard. The existing dwelling is in need of an upgrade.





**Subject Site as viewed from Jenner Street**

With regards to topography the subject site has a gradual fall from the rear boundary to the street enabling stormwater to flow via gravity to Council's drainage system in Jenner Street.

The applicant does not propose to alter the existing drainage arrangements given that the proposed upper level is effectively contained above the footprint of the existing dwelling.

The building is not listed under the Manly Local Environmental Plan 2013 as having any heritage significance nor is it in the immediate vicinity of any items of heritage significance. The subject site is not situated within a conservation precinct.

No trees require removal to facilitate the proposed development. Ample green space exists around the dwelling to assist with natural absorption.

## 2.2 Site Context

The subject site is situated within an established residential precinct characterised by a mix of two and three storey buildings. The dwellings in the precinct are generally well presented.

Existing development on the immediately adjoining properties comprises of the following:

- Adjoining the subject site to the west is a two storey contemporary dwelling maintaining a substantial side setback from the common boundary. Outlook from the adjoining dwelling appears to be oriented to the south and rear yard.



The proposed upper level addition on the subject site is proposed to be contained within the typical street building zone and also direct outlook to the street and rear yard. The proposed siting of the upper level is forward of the existing two storey component and that of the design part of the development consent. The proposed upper level addition is appropriately



sited to ensure that overshadowing and privacy considerations are reasonably managed and well resolved to minimise impacts. No direct impacts to this adjoining property are envisaged.

- Adjoining the subject site to the east is a property known as No 16 Jenner Street. This adjoining dwelling maintains a standard side setback from the common boundary and also is designed to direct viewing to the front and rear of the property.



The proposed upper level on the subject site only presents one frosted glass ensuite window in the direction of this adjoining property. No privacy issues arise.

Given the north-south orientation of the lot, there will be no concentration of shadows cast across this adjoining property.



### **3.0 PROPOSED DEVELOPMENT**

The applicant seeks development consent to undertake the following at No 18 Jenner Street Seaforth:

- Demolish an existing upper level; and
- Construct an upper level addition comprising of:
  - A master bedroom with a walk-in robe and ensuite. A street facing balcony is also proposed to service the main bedroom;
  - A living room and a bathroom;
  - Two additional bedrooms with built-in cupboards; and
  - Internal staircase accessing lower level.
- Alterations to the ground floor of the existing dwelling include:
  - A new entry portico and front steps;
  - Removal of some internal walls to create an open plan living and dining area;
  - A new kitchen and laundry;
  - A new roof over the existing rear patio;
  - Retain the approved carport in the design; and
  - Install an internal staircase accessing the upper.

#### **3.1 Design Approach**

The proposed upper floor addition is sought to provide most needed quality internal living space to meet the needs of the residents. The proposed upper level addition better represents the site's development potential and presents optimum floor space on a valued large allotment in the locality. The proposal includes a standard roof profile consistent with the lower level of the dwelling and that of the proposed carport.

The amended design incorporates modest floor to ceiling heights.

The design solution ensures that privacy issues are minimal. The outlook from the proposed addition is oriented towards the rear yard and street frontage. An upper level balcony is proposed off the main bedroom offering a potential water view.

Shadows cast by the proposed addition will generally fall in a sweeping motion towards the south across the street. No shadows are concentrated across adjoining dwellings.

Adjoining dwellings to the rear are well distant given the generous depth of the subject street block. In addition established trees along the rear boundary would ensure that view loss is not an issue with the subject application.

A slight encroachment into the building height plane occurs relative to the approved design. The encroachment into the height plane is centralised on site at the roof ridge. The additional building height proposed is marginally greater than that of the approved design. It should be noted that no issues arise from the public consultation process with the prior development application in relation to view loss.

### **3.2 Numeric Summary**

Site area	748.6sqm
Proposed FSR	Ground floor level: 112.7sqm First floor level: 98.8sqm Totals: 211.5sqm = 0.28 : 1
Existing Landscaped Area	252.2sqm or 34%
Proposed Landscaped Area	267.4sqm or 36%
Side setbacks	The proposed upper level will maintain compliant side setbacks.
Front and rear setbacks	No encroachment into the front or rear setbacks is proposed. Generous setbacks currently exist especially from the front setback.
Building Height	The proposed roof ridge creates a minor non-compliance with the 8.5m height control. A Clause 4.6 justification for the variation is provided in the body of the report.
Car Parking	Parking for two cars on-site already exists. The approved carport is retained as part of this application.

#### 4.0 MANLY LEP 2013

The land is zoned *R1 General Residential* under Manly LEP 2013. A dwelling house is permissible within the zone with development consent.

Alterations and additions are ancillary to the permissible dwelling use.



**Zoning Extract – MANLY LEP 2013**

<p><b>2.3 Zone objectives and Land Use Table</b></p> <p>(2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.</p> <p><u>Zone R1 General Residential</u></p> <p>1 Objectives of zone</p> <p>To provide for the housing needs of the community within a low density residential environment.</p> <ul style="list-style-type: none"> <li>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	<p>The proposed upper level addition to the dwelling specifically services the housing needs of the residents and provides an improved level of construction benefitting the broader community.</p> <p>Not relevant to the circumstances of the proposal.</p>	<p>Yes</p> <p>Not compromised</p>
<p><b>4.3 Height of buildings</b></p> <p>The maximum permitted building height is 8.5m.</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,</p>	<p>The applicant proposes a maximum height of 9m.</p> <p>The proposed building height and roof form achieves a proportionate built form on-site. The overall building height proposed is consistent with the prevailing character of the street and only marginally higher than the approved roof profile.</p>	<p>Refer to Clause 4.6 Justification</p> <p>Yes</p>



<p>(b) to control the bulk and scale of buildings,  (c) to minimise disruption to the following:</p>	<p>The fall in the land to the street and existing raised foundations contribute to the building height. The siting of the proposed upper level is suitably recessed and articulated to present appropriately to the street and minimise impacts.</p>	<p>Yes</p>
<p>(i) views to nearby residential development from public spaces (including the harbour and foreshores),</p>	<p>There are no significant views to be gained from public places of nearby prominent residential buildings.</p>	<p>Yes</p>
<p>(ii) views from nearby residential development to public spaces (including the harbour and foreshores),</p>	<p>There are no significant views to be gained of public places that will be disrupted. Viewing opportunities of the harbour are not impeded despite the minor non-compliance with the building height.</p>	<p>Reasonable view sharing is achieved in the context of precinct and site circumstances.</p>
<p>(iii) views between public spaces (including the harbour and foreshores),</p>	<p>There are no specific view corridors between public places likely to be gained across the subject site.</p>	<p>Yes</p>
<p>(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,</p>	<p>Shadows cast by the development are projected in a sweeping motion towards the street. No significant impacts are likely from the proposed development.</p>	<p>Yes</p>
<p>(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.</p>	<p>The subject site is not in and does not adjoin prominent bushland or any other environmentally sensitive land.</p>	<p>Yes</p>

<p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p>	<p>The height control applicable to the precinct is 8.5m. The proposed development includes a minor breach of the maximum height control with the ridgeline being approximately 9m.</p>	<p>Refer to Clause 4.6 Justification</p>
<p><b>4.4 Floor space ratio</b></p> <p>The maximum permitted FSR is 0.4:1.</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</p> <p>(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,</p> <p>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</p> <p>(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,</p>	<p>The proposed addition will create a proportionate dwelling on-site consistent with other buildings on the northern side of the street.</p> <p>There are no prominent landscape or townscape features to be viewed from the subject site or nearby properties. The proposed FSR at 211.5sqm or 0.28 : 1 is well below the maximum permitted on-site.</p> <p>The proposed upper level addition is contained within the footprint of the existing dwelling and presents a better architectural response to that of the approved design. The existing landscaped content will effectively remain on-site. There is no detrimental impact on landscaping on-site or within the precinct.</p> <p>There is no environmental impact arising, which would reduce the enjoyment or use</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

<p>(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.</p> <p>(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</p>	<p>of adjoining land. No new driveway crossings are proposed.</p> <p>Not applicable.</p> <p>The maximum FSR applicable to the site is 0.4:1.</p> <p>The proposed FSR is 0.28:1.</p>	<p>Yes</p> <p>Yes</p>
<p><b>4.6 Exceptions to development standards</b></p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p> <p>(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.</p>	<p>The applicant is relying on clause 4.6 of the LEP to vary the building height control.</p>	
<p><b>5.10 Heritage conservation</b></p> <p>(1) <b>Objectives</b></p> <p>The objectives of this clause are as follows:</p> <p>(a) to conserve the environmental</p>	<p>The subject site is not heritage listed and is not within a heritage</p>	<p>Yes</p>

<p>heritage of Manly,  (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,  (c) to conserve archaeological sites,  (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</p>	<p>conservation area. There are no heritage items in the vicinity of the site.</p> <p>No heritage impacts arise from the proposal.</p>	
<p><b>6.1 Acid sulfate soils</b>  (1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.  (2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</p> <p><b>Class of land Works</b>  5 Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p>	<p>The site is subject to an acid sulphate class 5 consideration.</p> <p>There is no significant excavation associated with the proposed development. There is no impact on the water table.</p> <p>Acid sulphate soils are not a constraint to the proposed development.</p>	<p>Yes</p>
<p><b>6.4 Stormwater management</b>  (1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.  (2) This clause applies to all land in residential, business, industrial and environmental protection zones.  (3) Development consent must not be granted to development on land to</p>	<p>The addition is effectively contained within the existing footprint of the dwelling. Down pipes will connect into the existing drainage system.</p> <p>The clause applies to the subject land.</p> <p>The proposed works are effectively contained within</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>



<p>which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and</p> <p>(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.</p>	<p>the existing building footprint. The landscape content on-site will remain unaltered.</p> <p>The proposed works do not generate the need for stormwater detention on-site. A reasonable extent of landscape area will remain onsite enabling natural absorption.</p> <p>The proposed works will not give rise to adverse stormwater impacts to adjoining properties and native bushland.</p> <p>Stormwater from the site can be collected and effectively disposed of via gravity to flow as per the current methods.</p>	<p>Yes</p> <p>Yes</p>
<p><b>6.5 Terrestrial biodiversity</b></p> <p>(1) The objective of this clause is to maintain terrestrial biodiversity by:</p> <p>(a) protecting native fauna and flora, and</p> <p>(b) protecting the ecological processes necessary for their continued existence, and</p> <p>(c) encouraging the conservation and recovery of native fauna and flora and their habitats.</p> <p>This clause applies to land identified as “Biodiversity” on the Terrestrial Biodiversity Map.</p>	<p>The site is not subject to biodiversity considerations.</p>	<p>Yes</p>

<p><b>6.6 Riparian land and watercourses</b></p> <p>(1) The objective of this clause is to protect and maintain the following:</p> <p>(a) water quality within watercourses,</p> <p>(b) the stability of the bed and banks of watercourses,</p> <p>(c) aquatic and riparian habitats,</p> <p>(d) ecological processes within watercourses and riparian areas.</p> <p>(2) This clause applies to all of the following:</p> <p>(a) land identified as “Watercourse” on the Watercourse Map,</p>	<p>The site is not near a watercourse.</p>	
<p><b>6.8 Landslide risk</b></p> <p>(1) The objectives of this clause are to ensure that development on land susceptible to landslide:</p> <p>(a) matches the underlying geotechnical conditions of the land, and</p> <p>(b) is restricted on unsuitable land, and</p> <p>(c) does not endanger life or property.</p> <p>(2) This clause applies to land identified as “Landslide risk” on the Landslide Risk Map.</p>	<p>The development will be appropriately engineered to ensure structural integrity.</p>	<p>Yes</p>
<p><b>6.9 Foreshore scenic protection area</b></p> <p>(1) The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.</p> <p>(2) This clause applies to land that is shown as “Foreshore Scenic Protection Area” on the <u>Foreshore Scenic Protection Area Map</u>.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the</p>	<p>The subject site is located within a scenic protection area.</p> <p>The proposed works are well distant from the foreshore.</p> <p>In the main the works will improve the appearance of the dwelling and are proportionate to the land size and existing dwelling.</p>	<p>Yes</p>

<p>following matters:</p> <p>(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,</p> <p>(b) measures to protect and improve scenic qualities of the coastline,</p> <p>(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,</p> <p>(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.</p>	<p>There are no significant overshadowing or foreshore implications.</p> <p>There will be no loss of significant views in the context of building height and setback compliance.</p> <p>An upper level addition has already been approved on the site. The proposed revised design represents an improved architectural response on the site to the benefit of the foreshore and scenic quality considerations. The proposed development should be welcomed in this regard.</p>	
<p><b>6.12 Essential services</b></p> <p>(1) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the disposal and management of sewage,</p> <p>(d) stormwater drainage or on-site conservation,</p> <p>(e) suitable vehicular access.</p> <p>(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any essential service referred to in this clause.</p>	<p>The proposal is for alterations and additions to an existing dwelling house. All services are available and connected to the property.</p> <p>The proposed additions do not increase run off. The new roof area will be connected to the existing domestic drainage of the dwelling.</p> <p>.</p> <p>Not applicable to the circumstances of the proposed development</p>	<p>Yes</p> <p>NA</p>

## 5.0 MANLY DEVELOPMENT CONTROL PLAN 2013

The NSW Planning Circular PS 13-003 provides the following advice on recent legislative changes to the purpose, status and content of DCPs.

*“When DCPs were first introduced around 30 years ago, they were intended to be flexible guidelines which complemented the controls provided by a local environmental plan (LEP). A council’s LEP is a legal document which is meant to be the primary instrument to guide local development.*

*Following a number of recent court cases, councils have felt obliged to treat DCPs as inflexible and rigid rule-books which must be consistently applied when considering development applications. This has caused delays and added to the complexity of the planning system.*

*DCPs are increasingly containing controls which are not consistent with those in the council’s LEP. This adds significantly to development assessment times and red tape in the planning system.*

*These provisions change the way a consent authority (in most instances the council) is to consider a DCP when assessing a development application.*

*The objectives of the changes are to:*

- reinforce the purpose and status of DCPs as guidance documents used in local planning decision-making, and*
- introduce flexibility in the way in which provisions in DCPs are applied by consent authorities when assessing development applications”*

The amendments to the Act make it clear that the principal purpose of a DCP is to provide guidance to a consent authority and to people who are proposing to undertake development on land to which the DCP applies. The provisions of the DCP have been considered in the preparation of the design and the relevant criteria are outlined below.

<p><b>3.1 Streetscapes and Townscapes</b>  <u>Streetscape</u>          Objectives 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.          Objective 2) To ensure development generally viewed from the street complements the identified streetscape.          Objective 3) To encourage soft landscape</p>	<p>The proposed works will vastly improve the streetscape presentation of the dwelling.</p> <p>No significant adverse impacts arise from the proposed development when considered</p>	<p>Yes</p>
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<p>alternatives when front fences and walls may not be appropriate.</p> <p>Townscape</p> <p>Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.</p> <p>Objective 5) To assist in maintaining the character of the locality.</p> <p>Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.</p> <p>Objective 7) To minimise negative visual impact, in particular at the arterial road entry point into the Municipality, so as to promote the townscape qualities of Manly.</p>	<p>in reference to the DCP objectives for 'streetscape'.</p> <p>The existing dwelling and proposed upper level addition remain well setback from the street and includes a cascading built form to the street.</p>	
<p><b>3.1.1.3 Roofs and Dormer Windows</b></p> <p>a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.</p> <p>b) Roofs should be designed to avoid or minimise view loss and reflectivity.</p> <p>c) Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.</p>	<p>The proposed addition has been designed to sit comfortably with the prevailing architectural style of the existing dwelling. The roof form is consistent with that of the existing dwelling on the subject site and maintains a symmetry of built form.</p> <p>There is no significant impact on view loss given prior Council considerations and minimal increase in building height proposed in this instance.</p> <p>There are no dormer windows proposed.</p>	<p>Yes</p> <p>Yes</p> <p>NA</p>
<p><b>3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)</b></p> <p>Objective 1) To protect the amenity of existing</p>		

<p>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.</p> <p>Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.</p> <p>Designing for Amenity</p> <p>a) Careful design consideration should be given to minimise loss of sunlight, privacy and views of neighbouring properties. This is especially relevant in higher density areas and in relation to development adjacent to smaller developments.</p> <p>b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private view points.</p> <p>c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards.</p>	<p>The proposed upper level addition has been carefully derived to address matters relating to privacy, view loss, solar access and general amenity. Windows in the proposed upper level are located to capture sunlight and outlook towards the street and rear yard.</p> <p>The concept of view sharing is maintained with the proposed design, as the siting of the proposed upper level remains recessed from the frontage of the property.</p> <p>No significant adverse impacts arise from the proposed development when considered in reference to the DCP objectives.</p>	<p>Yes</p>
<p><b>3.4.1 Sunlight Access and Overshadowing</b></p> <p>Objective 1) To provide equitable access to light and sunshine.</p> <p>Objective 2) To allow adequate sunlight to penetrate:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> private open spaces within the development site; and</li> <li><input type="checkbox"/> private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.</li> </ul> <p>Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> encouraging modulation of building bulk to</li> </ul>	<p>The proposed upper level addition does not given rise to adverse overshadowing impacts given the orientation of the site, separation between dwellings and fall in the land. The shadow diagrams demonstrate that shadows will be cast in a sweeping motion across the frontage of properties and the street.</p> <p>No significant adverse impacts arise from the proposed development when considered in reference to the DCP objectives. The proposed upper level is well modulated and the</p>	<p>Yes</p>

<p>facilitate sunlight penetration into the development site and adjacent properties; and</p> <p><input type="checkbox"/> maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.</p> <p><b>3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties</b>          In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:</p> <p>a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on 21 June;</p> <p>b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on 21 June;</p> <p>c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.</p>	<p>upper level as it is contained to within the existing foot print of the dwelling.</p> <p>There are no significant additional shadow impacts given the topographical circumstances of the site, site orientation and the siting/design of adjoining buildings.</p> <p>No significant adverse impacts arise from the proposed development when considered in reference to the DCP objectives.</p>	<p>Yes</p>
<p><b>3.4.2 Privacy and Security</b>          Objective 1) To minimise loss of privacy to adjacent and nearby development by:</p> <p><input type="checkbox"/> appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;</p> <p><input type="checkbox"/> mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.</p> <p>Objective 2) To encourage awareness of neighbourhood security.          See also paragraph 4.1.5.3 Principal Private Open Space.</p> <p><b>3.4.2.1 Window Design and Orientation</b>          a) Use narrow, translucent or obscured glass</p>	<p>The proposed upper level addition will not result in significant loss of privacy to any adjoining property.</p> <p>No significant adverse impacts arise given the careful placement of windows and concentration of outlook to the south.</p> <p>Windows are oriented generally</p>	<p>Yes</p> <p>Yes</p>

<p>windows to maximise privacy where necessary.</p> <p>b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.</p> <p><b>3.4.2.3 Casual Surveillance</b>          In order to provide for the casual surveillance of the street and to provide a sense of security:</p> <p>a) some rooms should be oriented to the street;</p> <p>b) sight lines to the street frontage from a window of at least one habitable room should not be obscured by trees or any other object;</p> <p>c) fences, walls and landscaping should minimise opportunities for concealment and encourage social interaction; and</p> <p>d) in areas of high street noise, double glazing on windows is preferred, rather than the construction of high fences or walls as a sound attenuation measure.</p> <p><b>3.4.2.4 Acoustical Privacy (Noise Nuisance)</b></p> <p>a) Consideration must be given to the protection of acoustical privacy in the design and management of development.</p> <p>b) Proposed development likely to generate noise including outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.</p>	<p>towards the front and rear of the dwelling. There will be no viewing conflict from opposing windows between adjoining dwellings.</p> <p>The proposed upper level addition will provide better casual surveillance of the street with the inclusion of the upper level addition and balcony.</p> <p>Noted.</p> <p>There are no noise sources near the dwelling.</p> <p>There is no significant traffic/street noise.</p> <p>The proposed upper level addition relates to a single dwelling. No significant acoustic impacts arise from the proposal given the residential nature of the use.</p> <p>There is minimal change to any of the dwelling elements - open space driveways, parking etc.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>NA</p> <p>NA</p> <p>Yes</p>
<p><b>3.4.3 Maintenance of Views</b>          Relevant DCP objectives to be satisfied in relation to this paragraph include the following:          Objective 1) To provide for view sharing for</p>	<p>Harbour views from the site can be gained.</p>	<p>Yes in the context of the site,</p>



<p>both existing and proposed development and existing and future Manly residents.</p> <p>Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).</p> <p>Objective 3) To minimise loss of views, including accumulated view loss ‘view creep’ whilst recognising development may take place in accordance with the other provisions of this Plan.</p>	<p>No additional landscape planting is proposed on-site which would obstruct views.</p> <p>A standard roof pitch is proposed coupled with standard floor to ceiling heights aimed at achieving view sharing.</p> <p>No issues specific to view loss was brought up in the previous DA assessment.</p>	<p>established trees and scale of adjoining dwellings.</p>
<p><b>3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)</b></p> <p>Section 5(a)(vii) of the Environmental Planning and Assessment Act 1979 encourages ecologically sustainable development. Council require that the principles of ecologically sustainable development be taken into consideration when determining development applications under section 79C of the Environmental Planning and Assessment Act 1979 and under this plan.</p>	<p>The proposal is for an upper level addition. The BASIX certificate confirms compliance with relevant water saving and design requirements.</p>	<p>Yes</p>
<p><b>4.1 Residential Development Controls</b></p> <p>Where Residential Development Controls apply</p> <p>a) This section of the plan provides controls for development generally in LEP Zones R1, R2, R3, E3 and E4. These paragraphs may also apply to residential development elsewhere in Manly and are to be read in conjunction with development standards in the LEP.</p> <p>Objective 1) To delineate by means of development control the nature and intended future of the residential areas of Manly.</p> <p>Objective 2) To provide for a variety of housing types and densities while maintaining the exiting character of residential areas of</p>	<p>Noted</p> <p>Noted</p>	<p>Yes</p> <p>Yes</p>

<p>Manly.</p> <p>Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of Manly.</p> <p>Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.</p> <p>Objective 5) To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.</p> <p>Objective 6) To enable other land uses that are compatible with the character and amenity of the locality.</p> <p>Objective 7) To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increased demand.</p>	<p>The proposal is for a quality addition to an existing dwelling, which is well setback from adjoining dwellings and the street.</p> <p>No significant adverse amenity impacts arise.</p> <p>The landscaping content on-site will not change. No trees are required to be removed. The addition sits comfortably with the footprint of the dwelling. There are no significant adverse effects on the character, amenity and natural environment.</p> <p>NA.</p> <p>The proposal continues the residential use of the property.</p> <p>N/A</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<p><b>4.1.1 Dwelling Density and Subdivision</b></p> <p>Objective 1) To promote a variety of dwelling types and residential environments in the LGA.</p> <p>Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.</p> <p>Objective 3) To promote a variety of allotment sizes, residential environments and housing diversity.</p> <p>Objective 4) To maintain the character of the locality and streetscape.</p> <p>Objective 5) To maximise the use of existing infrastructure</p>	<p>The proposal is for a typical addition to an existing detached dwelling.</p> <p>There are no impacts on existing vegetation, waterways, riparian land and the topography.</p> <p>NA. There is no subdivision.</p> <p>No significant adverse streetscape or neighbourhood character issues arise.</p> <p>Existing site services are available.</p>	<p>Yes</p> <p>Yes</p> <p>NA</p> <p>Yes</p> <p>Yes</p>

<p><b>4.1.2.1 Wall Height</b></p> <p>a) Within the LEP Height of Buildings development standard, the maximum external wall height is calculated based on the slope of the land under the proposed wall. Figures 26, 27 and 28 provide guidelines for determining the maximum height of external walls based on the particular slope of the land along the length of these proposed walls. The maximum wall height control will also vary from one building, elevation or part elevation to another depending on the slope of land on which the wall is sited. Within the range of maximum wall heights at Figures 26 and 28, the permitted wall height increases as the slope of the land increases up to a gradient of 1 in 4, at which point the permitted maximum wall height is capped according to Figure 26.</p>	<p>The permitted wall height in the vicinity is 6.5m.</p> <p>The proposal includes a standard floor to ceiling heights over both levels and a shallow depth of the upper level to minimise the wall height relative to the sloping ground level.</p> <p>The proposed upper level is well articulated to enhance the visual presentation of the dwelling and will be consistent in wall height to other dwellings in the street.</p>	<p>Yes</p>
<p><b>4.1.2.2 Number of Storeys</b></p> <p>a) Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.</p>	<p>The proposal provides for a two storey dwelling.</p>	<p>Yes</p>
<p><b>4.1.2.3 Roof Height</b></p> <p>a) Pitched roof structures must be no higher than 2.5m above the actual wall height *, calculated in accordance with Figure 29.</p>	<p>The proposal includes a standard pitched roof profile with a maximum height to the ridge of 2.61m. The roof profile assists in meeting the architectural objectives for the site.</p>	<p>Meets the intent of the control</p>
<p><b>Roof Pitch</b></p> <p>c) The maximum roof pitch must be generally no steeper than 35 degrees. A roof with a steeper pitch will be calculated as part of the wall height. In this regard the wall height controls at paragraph 4.1.2.1 of this plan will apply to the combined wall height and the height of the roof steeper than 35 degrees.</p>	<p>The roof slope is consistent with a 25 degree profile.</p>	<p>Yes</p>

<p><b>4.1.3 Floor Space Ratio (FSR)</b></p> <p>Objective 1) To ensure the scale of development does not obscure important landscape features.</p> <p>Objective 2) To minimise disruption to views to adjacent and nearby development.</p> <p>Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.</p>	<p>The proposed FSR of 211.5sqm 0.28 : 1 sits within the permitted FSR of 0.4:1 .</p> <p>The dwelling retains a domestic scale and form. No significant impacts arise in respect of views or overshadowing.</p> <p>No significant adverse impacts arise from the proposed development when considered in reference to the DCP objectives.</p>	<p>Yes.</p> <p>Yes</p>
<p>Adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.</p>	<p>The proposed upper level addition reinforces the existing architectural form (including roof form) of the existing dwelling. The proposed works represent architectural improvements to that of the approved design and will positively contribute to the architectural diversity in the street.</p> <p>Adjoining properties are not adversely affected by overshadowing, view loss or privacy issues with the amended design.</p> <p>The dwelling retains a domestic scale noting that there is considerable diversity in building bulk and scale in the immediate vicinity of the site. The proposal is consistent with the established streetscape character in terms of street setback and will not have a</p>	

	significant adverse impact on the amenity of adjoining properties.	
<p><b>4.4.2 Alterations and Additions</b></p> <p>Manly Council promotes the retention and adaptation of existing buildings rather than their replacement with new structures.</p>	<p>The proposal retains the existing dwelling and provides new external finishes and building articulation across the street frontages to enhance the dwelling's streetscape presentation and appeal.</p>	Yes

## **6.0 SECTION 4.15 CHECKLIST**

The following provides an assessment of the proposal against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

*(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

*(iii) any development control plan, and*

*(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

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

*(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

### **Comment:**

The proposal is permissible and satisfies the objectives of Manly Local Environmental Plan 2013 and prescriptive and performance controls of the DCP.

A variation is sought from the building height development standard. Provided below is a clause 4.6 justification for the variation proposed.

**Clause 4.6** relates to **Exceptions to development standards**. The applicant proposes a variation from the building height development standard.

1. *The objectives of this clause are as follows:*

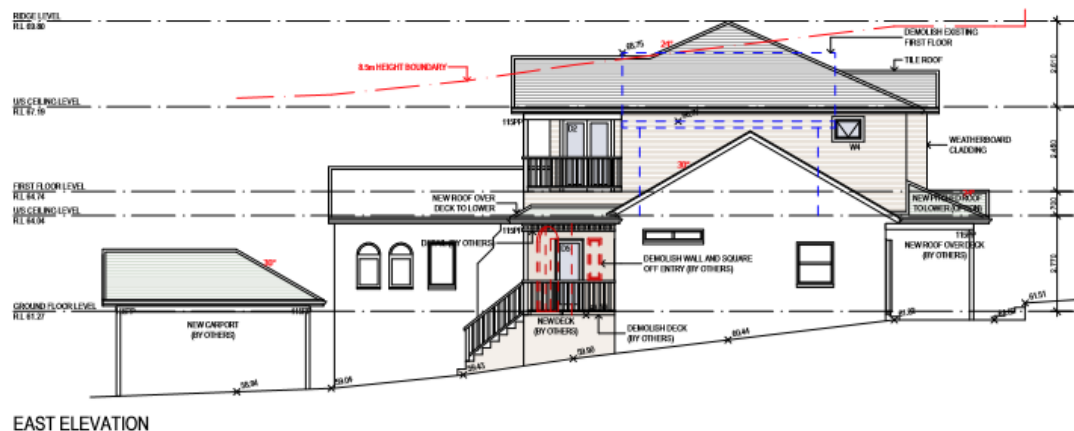
- a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

**Comment:**

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome**.

The variation to the height control by approximately 0.5m arises because of the topography of the site and general cross fall in the land from the rear boundary to the street. Also, the existing dwelling includes a sub floor across the frontage, which contributes to the building height. The encroachment into the height plane is for a portion of the roof ridge line only, which is centralised on-site.

Provided below is a depiction of the eastern elevation highlighting the maximum extent of the departure from the height standard.



The existing dwelling however is in good condition and retains quality floor space worthy of retention. The location of the upper level as proposed is logical and appropriately relates to the street and

neighbouring dwelling circumstances - view sharing and maintaining privacy.

Clause 4.6 of the instrument provides flexibility when applying development standards.

The proposed development has been architecturally designed to provide a well composed building that provides good amenity for future occupants, that respects the amenity of existing and future neighbouring development and that is compatible with the emerging character and development pattern of the locality.

It is significant to note that the variation does not result in excessive floor space or development density. The variation does not manifest in an overdevelopment of the site.

No adverse planning consequences (shadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise from the variation with the proposed development sitting comfortably on-site within the required setbacks. Rather, in this particular case the variation facilitates a good design outcome in terms of amenity, streetscape, built form and outlook from the proposed upper level.

The proposed development will sit comfortably in its context in terms of scale, massing and form. The minor variation to the building height standard will not be discernible to the casual observer from a streetscape perspective given that tall buildings are prominent in this precinct.

For reasons expressed in this submission the 'flexibility' provided by clause 4.6 of the LEP facilitates design outcome that does not impact on any adjoining property despite the proposed variation to the building height standard.

*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.*



**Comment:**

The height development standard is not expressly excluded from the operation of clause 4.6.

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.*

**Comment:**

Clause 4.6(3)(a) of the LEP provides a similar test as that set out in clause 3 of *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) and mirrors the fourth question Justice Lloyd established for considering SEPP 1 objections in *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC 24. This written request therefore draws from the authorities that deal with Justice Lloyd’s fourth question.

The term “unreasonable or unnecessary” is not defined in the relevant environmental planning instruments or in the Act. Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49] identifies 5 ways by which strict compliance with a development standard may be unreasonable or unnecessary. This written request adopts the first way identified by Preston CJ.

*42..... The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*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).”*

Justice Preston’s analysis requires the following questions to be answered.

1. What are the objectives of the development standard?
2. Does the development proffer an alternative means of achieving the objectives of the development? (unnecessary)
3. Would no purpose be served if strict compliance was required? (unreasonable)

### **Objectives of development standard**

The objectives of the height control are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
  - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
  - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
  - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The subject site is zoned low density residential and does contain dwellings built on sloping ground which are similar in scale. The dwelling will be consistent in this regard.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation.

There will be no erosion of bushland or scenic quality.

### **Compliance unnecessary**

The proposed development proffers alternative means of achieving the objective of the minimum building height standard. The surrounding precinct maintains sloping land and large residential dwellings in the R2 low density residential zone.

The proposed development achieves the desired residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access.

The exceedance of the building height standard does not result in a building that is excessively bulky. Effectively 2 levels will be presented to Jenner Street.

As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.

### **Compliance unreasonable**

There would be no purpose served if strict compliance was required by the consent authority.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non compliances or adverse environmental impacts arising from the variation in this instance.

A compliant development (building height) would have a similar performance in regards to overshadowing and bulk/scale. A lower roof profile or flat roof however would not be consistent with the standard

roof profile adopted elsewhere on the dwelling and carport and would appear disjointed from an architectural perspective.

Despite the building height variation, a compliant floor space ratio is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the application of the standard in this instance (rather compliance would result in negative urban design outcomes); strict compliance is therefore unreasonable.

The proposed design is effectively a better and more cost effective outcome than that of the approved design.

### **Environmental planning grounds**

A written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b) and 4.6(4)(a)(i)).

The term “environmental planning grounds” is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meaher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

In this particular case the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and controls.

Compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

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 Secretary has been obtained.*

**Comment:**

The objectives of the zone are:

R2 Low Density:

- *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.*

**Comment:**

The proposed development will be in the public interest because it is consistent with the objective of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is consistent with the objectives as:

- The proposed development provides for the construction of a modest and well proportioned upper level addition and ground level alterations and additions. The development has been site specifically designed and will positively contribute to the

streetscape and enhance the streetscape relative to the existing built form on the site. A general upgrade of the existing built form will also occur.

- The proposed development assists in establishing the desired future character for the locality. The proposal may act as a catalyst stimulating further redevelopment in the locality, consistent with the zone objective of meeting the housing needs of the community.
- The proposed development is well contained on-site and will not result in significant adverse amenity impacts to adjoining properties.
- The proposed development provides an appropriate low-density infill development and contemporary construction.

There has been a progressive change in the built character of the locality with a number of older style dwellings being replaced with new contemporary two storey dwellings.

The proposed height scale and massing of the development is considered to be compatible with the evolving and desired built character of the area.

The height mass and scale of the development is compatible with that of other development in the locality.

The design solution respects the development pattern of the locality (the spatial arrangement of buildings having regard to side, rear and street building setbacks) maintaining the rhythm of the street.

The proposed height variation is of no consequence in respect of this objective. Approval of the proposed development will have no impact on any other nearby development opportunities.

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

The proposed height encroachment does not result in any significant view loss, loss of privacy or overshadowing in the context of the site. There are no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling heights are proposed inclusive of a standard roof pitch.

Having regard to the above the proposal is consistent with the objectives of the height control and the objectives of the zone.

*(b) the concurrence of the Director-General has been obtained.*

**Comment:**

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

*(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.*

**Comment:**

The proposed variation does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining the development standard or compromised by approving the building as proposed.

*(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.*

**Comment:**

Not relevant as the development application is not for land subdivision nor is it within the zones specified in the clause.

*(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).*

**Comment:**

It is assumed that the consent authority will keep the required records.

*(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.*

**Comment:**

No adverse matters arise in respect of the above considerations.



In view of the above, the proposed variation from the development standard is reasonable in this instance. A standard roof profile is proposed maintaining a consistent built form with other dwellings in the vicinity and appropriately addressing site circumstances.

The proposed development is appropriate in consideration of the streetscape objectives, siting requirements and protecting neighbour amenity. It is recommended that Council invoke its powers pursuant to clause 4.6 and approve the application in this instance.

*b. the likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality.*

**Comment:**

A detailed site analysis was undertaken to determine the appropriate form of development having regard to Council's planning controls, the circumstances of the site and neighbouring properties and the desired future character of the locality.

The proposed development provides for a high degree of amenity for future occupants, while being respectful of the amenity of neighbouring properties.

In view of the above the development will have acceptable social and environmental implications given the nature of the zone.

*c. the suitability of the site for the development.*

**Comment:**

The subject site has an ideal area, configuration and topography to accommodate the proposed development. The design solution is based on sound site analysis and responds positively to the characteristics of the site and adjoining development.

*d. any submissions made in accordance with the Act or the regulations.*

**Comment:** Nil

*e. the public interest*

*Note.*

*See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.*

**Comment:**

The proposed development is purely domestic in nature and provides for the attainment of additional quality floor space within a well serviced locality therefore satisfying urban consolidation initiatives and furthering the public interest.

*(2) Compliance with non-discretionary development standards—development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:*

*(a) is not entitled to take those standards into further consideration in determining the development application, and*

*(b) must not refuse the application on the ground that the development does not comply with those standards, and*

*(c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.*

*(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:*

*(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and*

*(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.*

*Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).*

**Comment:**

The application has merit and is consistent with the intent of the controls given the site context.

*(3A) Development control plans*

*If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:*

*(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and*

*(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*

*(c) may consider those provisions only in connection with the assessment of that development application.*

*In this subsection, standards include performance criteria.*

**Comment:**

The provisions of the development control plan have been considered as part of the application. The proposal is reasonable in this regard

*(4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.*

*(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).*

*(6) Definitions In this section:*

*(a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and*

*(b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.*

**Comment:** Not applicable.

## **7.0 CONCLUSION**

The proposal is for an upper level addition and ground level alterations and additions to an existing dwelling. The proposal represents an improvement to a valid development consent issued recently for similar works in terms of form, function and aesthetics.

A minor breach in the building height standard is reasonable in this instance pursuant to the provisions of Clause 4.6 of the MLEP 2013.

The proposed upper level addition will contribute to the presentation of the dwelling when viewed from the street.

No significant adverse impacts arise from the proposal.

The proposal is fully compliant with the FSR controls.

Reasonable measures have been taken by the designer to minimise privacy loss and there will be no significant overshadowing of adjoining properties as a result of the proposed addition in the context of the site and topographical circumstances. Compliance with setbacks also ensures that the concept of view sharing is maintained.

In view of the above and the assessment undertaken in this SEE, the proposed development is appropriate and Council approval is recommended.