

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0344
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<b>Responsible Officer:</b>	Benjamin Price
<b>Land to be developed (Address):</b>	Lot 130 DP 11162, 15 Alto Avenue SEAFORTH NSW 2092
<b>Proposed Development:</b>	Subdivision of 1 lot into 2 lots and associated infrastructure
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Shannon Elizabeth Deeran
<b>Applicant:</b>	Matt Deeran

<b>Application lodged:</b>	09/04/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	30/04/2019 to 14/05/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 10,000.00
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### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Development Control Plan - 3.7 Stormwater Management

Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.4.8 Subdivision

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 130 DP 11162 , 15 Alto Avenue SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Alto Avenue and western side of Prince Edward Road.</p> <p>The site is irregular in shape with a frontage of 15.24m along Alto Avenue and 19.24m along Prince Edward Road and an average depth of 68.5m. The site has a surveyed area of 1037m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling house.</p> <p>The site slopes from south to north and includes a crossfall of approximately 1.3m.</p> <p>The site is generally landscaped with lawn and trees.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

**PLM2018/0091** - A pre-lodgement meeting was held on the 22/05/2019. The development involved demolition, subdivision into two lots and construction of a dwelling house. It was advised in the meeting that the stormwater infrastructure was to be identified prior to lodgement of the development application. It was also advised that the setbacks of the dwellings could not be supported.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the torrens title subdivision of lot 130 DP 11162 into two lots and associated infrastructure.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&amp;A Regulation 2000)</p>	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 Matters for Consideration'	Comments
	(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Rodney Dean Hermann Mrs Jean Elizabeth Hermann	11 Alto Avenue SEAFORTH NSW 2092
Mr Lars Peter Weber	9 Alto Avenue SEAFORTH NSW 2092

The following issues were raised in the submissions and each have been addressed below:

- **Council Drainage Easement Constraint on Building Envelope and Flood Impacts**
- **Non-Compliance with Manly DCP**
- **Board Sewer and Services Constraint on Building Envelope**
- **Overshadowing and Privacy**
- **Inconsistencies with reports and plans**
- **Tree Removal**

The matters raised within the submissions are addressed as follows:

- **Council Drainage Easement Constraint on Building Envelope and Flood Impacts**  
A submission raised concerns over the developments impact on the drainage easement and overland flow path.  
Comment:



Councils Development Engineers have reviewed the above issues and recommended refusal on this basis. The recommendation for this application is consistent with the comments of the Development Engineer.

- **Non-Compliance with Manly DCP**

Concern was raised with the non-compliance of the building envelope with the rear setback control of the Manly DCP 2013 and the resultant impacts to the development site and the adjoining properties.

Comment:

The non-compliance with the rear setback control has been assessed below. In summary the non-compliance is not supported by Council.

- **Board Sewer and Services Constraint on Building Envelope**

The submission raised concerns over the existing sewer on the lot

Comment:

Should the application be approved a condition requiring the approved plans be submitted to Sydney Water.

- **Overshadowing and Privacy**

Concern was raised over the potential overshadowing and privacy impacts of the building envelope.

Comment:

While this is difficult to assess during the subdivision stage, the likely impacts of the building envelope have been considered under clause 4.1.4 Setbacks (front side and rear) and Building Separation.

- **Inconsistencies with reports and plans**

The submissions raised concerns that the proposed building envelope was not consistent with the built form proposed in the Arborist and Flood reports and Architectural Plans, and Stormwater Plans.

Comment:

These inconsistencies have been noted and refusal of the application is recommended.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the subdivision proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of street tree planting.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, including 4.1.1.2 Residential Land Subdivision, and 4.4.8 Subdivision.</p> <p>The subdivision proposal includes an indicative building layout contained east of the drainage easement, and this does not impact upon the existing trees located in the Alto Avenue frontage between the boundary and the drainage easement. The existing driveway is</p>

Internal Referral Body	Comments
	<p>proposed to be retained and utilised for the subdivision Lot.</p> <p>The Construction Impact &amp; Management Statement report reviewing impacts to existing trees, as prepared by Growing My Way, is based on a previous indicative building layout and driveway location, and provides recommendations for tree removal which are now unassociated with the current scheme. The current subdivision plans with indicative building layout contained east of the drainage easement, permits the retention of all existing trees and vegetation on site. All trees and vegetation outside of the indicative building layout are to be retained, and are subject to conditions.</p> <p>Street tree planting to satisfy 3.3.3 Footpath Tree Planting is required as part of the subdivision, as conditioned.</p> <p>Housing development on the subdivision lot, subject to a future development application, shall include setback provisions that enhance planting within deep soil zones, including native tree planting.</p>
NECC (Development Engineering)	<p>The applicant proposed to subdivide a lot into two with dual frontages.</p> <p>However, Council record's indicate the property is burdened by a 825 mm diameter Council stormwater pipeline which traverses across the site.</p> <p>Development Engineer cannot support the application as below:</p> <p>Council stormwater assets:</p> <p>In accordance with Council's Manly Drainage Easement Policy- D100, the applicant is required to provide the information of the pipeline. However, the information has not been submitted. The following details are submitted:</p> <ol style="list-style-type: none"> <li>1. Accurately locate, confirm dimensions including depth and plot to scale Council's stormwater pipelines and associated infrastructure on the DA site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor.</li> <li>2. All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with the above-mentioned policy.</li> <li>3. Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance with Council's policy are to be submitted.</li> <li>4. The policy also requires the developer to create an easement over the Council pipeline if there is not currently one in place.</li> </ol> <p>Also, please be advised that no structure shall be built above or over the Council's pipeline without 5 metres high clearance. An easement of the pipeline shall be created in the new DP.</p>

Internal Referral Body	Comments
	<p>Overland flow: A overland flow report has been submitted with the application. However, it refers into a building footprint which is different to the submitted "Concept Subdivision Plan". Please confirm the proposed future foot print of the building. Building footprint has a significant impact to the existing overland flow on the development site and surrounding properties.</p> <p>Also, the report shows the suspended slab/ foundation of the building will be employed in accordance with the cross section of post development in HEC-RAS model. Please be advised that Council does not accept any suspend slab over the overland flow path.</p> <p>Stormwater The new and existing structure in the proposed lot 2 shall be collected and connected to the existing drainage system. The system shall discharge into the Council pipeline via a proposed easement. The connection details to the Council pipeline must be submitted. Furthermore, an private easement of drainage shall be created in the proposed Lot 1.</p> <p>In this regard, Development Engineering cannot support the application when the above information is missing.</p> <p><u>Planning Comment</u></p> <p>The recommendation of refusal by Councils Development Engineer has been adopted by this assessment. Suitable reasons for refusal have been included to ensure these comments are reflected in the notice of determination.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.



## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	500sqm	Lot 1: 512.6sqm	N/A	Yes
		Lot 2: 519.3sqm		

### Compliance Assessment

Clause	Compliance with Requirements
4.1 Minimum subdivision lot size	Yes
6.4 Stormwater management	No
6.12 Essential services	Yes

### Detailed Assessment

#### 6.4 Stormwater management

##### Description of Non-Compliance

The Manly LEP 2013 specifies that development consent must not be granted unless the consent authority is satisfied that the development 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. As discussed by the Development Engineer above, the proposed building envelope is within an overland flow path and is in close proximity to stormwater infrastructure.

##### Merit Consideration

With regard to the non-compliance the development is considered under the objectives of the clause below:

(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.*

Comment:

The development provides insufficient information to determine whether the proposed building envelope is capable of supporting future development. In particular the information submitted does not demonstrate that the development will minimise impacts on urban stormwater. The application cannot be supported by Council.

Furthermore, the building envelope is located over an overland flow path. The reports submitted with the application indicate that it is intended to employ a suspended slab over the overland flow path. As advised by Councils Development Engineers above, a suspended slab construction over an overland flow path cannot be supported due to likely impacts to the overland flow path and the flow on impacts to adjoining properties. The proposed building envelope is not supported by Council.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

In consideration of the proposal and the merit consideration would the development maintain the ability for the development to be consistent with the:

• objectives of the DCP?	NO
• zone objectives of the LEP?	YES
• objectives of the LEP?	NO
• objects specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?	NO

Based on a merit consideration, the circumstances of this application / site and an assessment of the proposal against the underlying objectives of the clause, is:

• Compliance with the requirement unreasonable?	NO
• Compliance with the requirement unnecessary?	NO
• Is the proposal acceptable?	NO

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 1037sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings	2 dwellings	N/A	Yes
4.1.4.4 Rear Setbacks	8m	Lot 1: 4m Lot 2: 1.7m	50% - 79%	No

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	No
4.1.1.2 Residential Land Subdivision	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.4.8 Subdivision	No	Yes

#### Detailed Assessment

### **3.7 Stormwater Management**

#### Description of non-compliance

This clause requires compliance with Councils stormwater policy. Councils Development Engineers have assessed the application above and have found it to include insufficient information to demonstrate compliance with the Councils Stormwater Policy.

#### Merit Consideration

With regards to the non-compliance the development is considered under the objectives of the control below:

*Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.*

#### Comment:

The proposed development includes insufficient information to demonstrate that the building envelope is suitably sited to minimise impacts on the existing stormwater infrastructure and the overland flow paths. The proposal does not suitably demonstrate the management of urban stormwater.

*Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.*

#### Comment:

The proposal is for subdivision and will not result unreasonable stormwater impacts due to construction sites.

*Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.*

Comment:

The proposal will allow for suitable ground infiltration of stormwater for any future developments.

*Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.*

Comment:

The proposal includes insufficient information to demonstrate adequate arrangements for the ongoing maintenance of stormwater facilities. In particular the stormwater infrastructure on the site has not been identified.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

In consideration of the proposal and the merit consideration would the development maintain the ability for the development to be consistent with the:

• objectives of the DCP?	NO
• zone objectives of the LEP?	YES
• objectives of the LEP?	NO
• objects specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?	NO

Based on a merit consideration, the circumstances of this application / site and an assessment of the proposal against the underlying objectives of the clause, is:

• Compliance with the requirement unreasonable?	NO
• Compliance with the requirement unnecessary?	NO
• Is the proposal acceptable?	NO

#### 4.1.1 Dwelling Density, Dwelling Size and Subdivision

Description of Non-compliance

The Manly DCP 2013 requires the following:

*b) The future development of new lots is to be considered in DAs for subdivision.*

*d) The provision of drainage, easements and servicing requirements must be considered and any resultant adverse impacts- environmental or otherwise are to be minimised or resolved in the design. In particular sufficient details of stormwater management are to accompany the subdivision.*

In this regard, the proposal includes a building envelope to demonstrate the future development of the lot. The proposed building envelope is in close proximity to a proposed drainage easement and overland flow path. The location of the stormwater infrastructure has not been identified as such it is unknown whether the stormwater infrastructure will be covered by the easement. The flood report is based on a building footprint that is inconsistent with the concept subdivision plan and includes a suspended slab construction over the overland flow path which is not permitted.

Merit Consideration

With regard to the consideration for the variation the development is considered under the objectives of the control below.

*Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

Comment:

The proposal will result in a greater variety of lot sizes within the locality.

*Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*

Comment:

The flood report demonstrates that an overland flow path occurs through the centre of the site. The proposed building envelope falls within this overland flow path. Significant concern is raised over habitable areas within an overland flow path and the resultant flow on impacts to nearby residential development and waterways. Furthermore the flood study submitted is inconsistent with the proposed building envelope and provides insufficient justification to demonstrate no unreasonable impacts within the locality. The development is inconsistent with this objective.

*Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

Comment:

The additional lot will promote a greater variety of dwelling sizes and will allow for acceptable internal amenity on this site.

*Objective 4) To maintain the character of the locality and streetscape.*

Comment:

The proposed building envelope is set significantly back from the streetscape and will not impact on the street or the character of the locality.

*Objective 5) To maximise the use of existing infrastructure.*

Comment:

The development will maximise the use of the existing infrastructure.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

In consideration of the proposal and the merit consideration would the development maintain the ability for the development to be consistent with the:

• objectives of the DCP?	NO
• zone objectives of the LEP?	YES
• objectives of the LEP?	NO
• objects specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?	NO

Based on a merit consideration, the circumstances of this application / site and an assessment of

the proposal against the underlying objectives of the clause, is:

• Compliance with the requirement unreasonable?	NO
• Compliance with the requirement unnecessary?	NO
• Is the proposal acceptable?	NO

#### 4.1.4 Setbacks (front, side and rear) and Building Separation

##### Description of non-compliance

The Manly DCP 2013 requires a rear setback of 8m. The proposal includes a building envelope with a 4m rear setback on Lot 1 and a rear setback of 1.7m to the existing dwelling on Lot 2

##### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

##### Comment:

The proposal includes a large setback from the street and will not result in any unreasonable impacts on the streetscape of the locality.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

##### Comment:

The proposal includes significant non-compliance's with the rear setback control on both Lot 1 and Lot 2. The non-compliance's will result in insufficient separation between the dwellings and is likely to result in significant overlooking between the two lots. Furthermore the building envelope on proposed Lot 1 will result in significant overlooking of the private open spaces of the development to the north and overshadowing of the windows to habitable rooms to the south. The proposed subdivision and building envelope will not ensure and enhance local amenity within the locality. The development is inconsistent with this objective.

The development will not result in any unreasonable impacts on views, traffic conditions or the streetscape of the locality.

*Objective 3) To promote flexibility in the siting of buildings.*



Comment:

The proposed flexibility is likely to result in unreasonable impacts on the amenity of the adjoining properties. As such the flexibility is not considered to be appropriate in this circumstance.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The development will allow adequate deep soil areas for planting and subject to conditions will maintain the natural features of the site.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment:

Not applicable

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

In consideration of the proposal and the merit consideration would the development maintain the ability for the development to be consistent with the:

• objectives of the DCP?	NO
• zone objectives of the LEP?	YES
• objectives of the LEP?	NO
• objects specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?	NO

Based on a merit consideration, the circumstances of this application / site and an assessment of the proposal against the underlying objectives of the clause, is:

• Compliance with the requirement unreasonable?	NO
• Compliance with the requirement unnecessary?	NO
• Is the proposal acceptable?	NO

#### 4.4.8 Subdivision

Description of Non-compliance

The Manly DCP 2013 requires the following:

*b) The provision of drainage, easements and servicing requirements must be considered and any resultant adverse impacts - environmental or otherwise are to be minimised or resolved in the design. In particular, sufficient details of stormwater management are to accompany DAs for subdivision.*

The proposed building envelope is located over an overland flow path and adjacent to a proposed easement. The stormwater infrastructure has not been identified and the flood report submitted with the application includes a design inconsistent with the proposed building envelope. It is noted that this clause does not contain objectives relevant to this requirement. However, these issues have been assessed in detail above.

#### Merit Consideration

With regard to the consideration for the variation, the development has been assessed under the relevant objectives below:

Objective 1) To maintain characteristic and established subdivision patterns

#### Comment:

The development is of a lot size and configuration that is consistent with the established pattern of subdivision within the area.

Objective 2) To maintain the visual scale of development when viewed from the street level

#### Comment:

The proposed building envelope is significantly setback from the street and, subject to future development complying with the floor space ratio and height of buildings development standard of the Manly LEP 2013, the development will not result in any unreasonable visual scale. \_

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;

- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0344 for the Subdivision of 1 lot into 2 lots and associated infrastructure on land at Lot 130 DP 11162,15 Alto Avenue, SEAFORTH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.7 Stormwater Management of the Manly Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.1 Dwelling Density, Dwelling Size and Subdivision of the Manly Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4.8 Subdivision of the

Manly Development Control Plan.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Benjamin Price, Planner**

The application is determined on 03/08/2019, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**