

STATEMENT OF ENVIRONMENTAL EFFECTS

**Proposed Upper Level Addition and
Alterations to Lower Levels of a
Residential Dwelling**

at

No 6 Ross Street Seaforth

STATEMENT OF ENVIRONMENTAL EFFECTS

May 2019

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1.0 INTRODUCTION

Planning Direction P/L has been engaged to prepare a Statement of Environmental Effects to accompany a development application to Northern Beaches Council. The applicant is seeking approval to carry out the following development on land known as No 6 Ross Street Seaforth:

- Construct an upper level addition comprising of master bedroom with walk in robes, two ensuites and a library/office; a second bedroom and ensuite, a central sitting area, utility room, laundry, internal stair access and lift to the lower levels, Also proposed is a central balcony across the front and rear elevations of the proposed upper level;
- Proposed on the ground floor are mainly internal alterations comprising of the demolition of some internal walls to create an enlarged living/dining area, a new kitchen, a bathroom, modifications to a bedroom to include a study nook and a walk-in robe + ensuite, creation of a pool table room, adjustments to the front entry and portico; installation of stacker doors at the rear of the dwelling opening out onto the outdoor patio and pool area and installation of a staircase and lift accessing the proposed upper and lower levels;
- Alterations to the lower level/basement by extending the garage to create two formal parking spaces, removal of stairs and construction of a new staircase accessing the upper level, provision of a lift, inclusion of a bathroom and storeroom servicing the rumpus room and replacement of a street facing window with French doors. Also proposed is a external feature staircase from the front yard to the ground floor of the dwelling; and
- A new colorbond roof is proposed over the dwelling with a low 10 degree pitch. The applicant proposes to create a 'Hamptons' style design through the use of symmetry in architecture, provide timber balustrades, external stair access and a period roof design. Also proposed is a revamp of the external landscaping across the rear and frontage of the site so as to compliment the built form, beautify the site and provide privacy screening around the rear yard.

The proposal has been prepared pursuant to the provisions of Manly Local Environmental Plan 2013 and the Manly Residential 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;
- Conclusions in respect of the proposed development.

This statement of environmental effects should be considered in conjunction with the development plans prepared by *b + w*.

2.0 SITE AND CONTEXT

2.1 Subject Site

The subject site is known as No 6 Ross Street Seaforth and is situated on the northern side of Ross Street, west of the commercial precinct of Seaforth.



Locality Plan

The subject site is legally identified as Lot 9 in DP 1142062.

The subject site is regular in configuration with the exception of a slightly splayed front boundary.

The subject site has a site area of **1,146sqm**. A survey plan is included with the development plans.

Current improvements on the subject site consist of a two level brick and tile dwelling. The dwelling fronts Ross Street and benefits from a 13m front setback. The existing dwelling is in reasonable condition however offers limited floor space and streetscape appeal. The dwelling in its current condition is in need of restoration and rectification.



Subject Site

The existing dwelling is not listed under the Manly Local Environmental Plan 2013 as having any heritage significance. The site is not located within a heritage conservation area.

There are no significant trees on the subject site or neighbouring properties that would be affected by the proposed upper level addition.

With regards to topography the subject site has a notable and consistent fall from the rear boundary to Ross Street. Such has enabled the provision of an excavated lower level inclusive of garaging. The rear of the dwelling effectively presents a single storey to the rear yard. The dwelling inclusive of the proposed addition will continue to drain via gravity flow to existing stormwater infrastructure located in Ross Street.

Shadows cast as a result of the proposed addition will effectively fall across front yard of the subject site and neighbouring properties.

2.2 Site Context

The subject site is situated within an established residential precinct, which is characterised by a mix of building types two storey dwellings, a childcare centre and commercial development to the east. There is diversity in building material and external finishes in the street and diversity in architectural styles and construction periods. Older style single storey dwellings are gradually being replaced by larger two and three level contemporary dwellings.

Immediately adjoining the subject site to the east in Ross Street is a 3 storey/level dwelling known as No 4 Ross Street.

This adjoining dwelling has a standard side setback from the subject site, however the dwelling on the subject site is well setback from this adjoining dwelling. The predominant outlook from the neighbouring dwelling is towards the street and the rear yard rather than towards the subject site.



No 4 Ross street

The proposed design presents only 2 highlight type windows and a window for the staircase along its eastern elevation. Many existing windows along

this elevation will be blocked up ensuring that no privacy impacts arise. Windows in the proposed upper level eastern elevation will be of a decorative texture to protect privacy. Privacy between properties will be improved with the proposed works.

Given the orientation of the site, shadows from the proposed upper level will be cast across the frontage of the adjoining site. The adjoining property will maintain ample solar access into its living space and rear yard. No adverse issues arise in respect of overshadowing.

Adjoining the subject site to the west is a two level brick and tile residential dwelling, which is sited on a higher ground level than the subject dwelling. Due to the orientation of the subject site and topography, there will be no privacy or overshadowing concerns between properties.

A childcare centre as depicted below form part of the visual catchment.



View of the adjoining western dwelling - No 8 Ross St and childcare centre further to the west

3.0 PROPOSED DEVELOPMENT

3.1 Overview

The applicant seeks development consent to undertake the following at No 6 Ross Street Seaforth:

- Construct an upper level addition comprising of master bedroom with walk in robes, two ensuites and a library/office; a second bedroom and ensuite, a central sitting area, utility room, laundry, internal stair access and lift to the lower levels, Also proposed is a central balcony across the front and rear elevations of the proposed upper level;
- Proposed on the ground floor are mainly internal alterations comprising of the demolition of some internal walls to create an enlarged living/dining area, a new kitchen, a bathroom, modifications to a bedroom to include a study nook and a walk-in robe + ensuite, creation of a pool table room, adjustments to the front entry and portico; installation of stacker doors at the rear of the dwelling opening out onto the outdoor patio and pool area and installation of a staircase and lift accessing the proposed upper and lower levels;
- Alterations to the lower level/basement by extending the garage to create two formal parking spaces, removal of stairs and construction of a new staircase accessing the upper level, provision of a lift, inclusion of a bathroom and storeroom servicing the rumpus room and replacement of a street facing window with French doors. Also proposed is a external feature staircase from the front yard to the ground floor of the dwelling; and
- A new colorbond roof is proposed over the dwelling with a low 10 degree pitch. The applicant proposes to create a 'Hampton' style design through the use of symmetry in architecture, provide timber balustrades, external stair access and a period roof design. Also proposed is a revamp of the external landscaping across the rear and frontage of the site so as to compliment the built form, beautify the site and provide privacy screening around the rear yard.



Artists Impression of front and rear elevations



The proposed roof form over the proposed upper level maintains a low pitched profile and symmetry consistent with the lower level. Uniform colour finishes are proposed with the overall upgrade of the dwelling.

3.2 Numeric Summary

Site area	1,146.5sqm
Proposed FSR	Proposed Upper level - 157.2sqm Total floor space of the dwelling - 393sqm and FSR of 0.34:1
Proposed Site coverage	538.3sqm or 47%
Proposed Landscaped Area	608.2sqm or 53% A landscape plan has been prepared for the site
Side setbacks	Existing compliant side setbacks
Front and rear setbacks	No change is proposed to the front or rear setback for the dwelling.
Building Height	A variation is sought from the 8.5m height control. The maximum building height proposed is 9.29m to the roof ridge. A clause 4.6 justification is provided in the body of the report.
Car Parking	Parking for two cars on-site already exists. It is proposed to improve the garaging on-site so as to provide two formal garage car spaces.

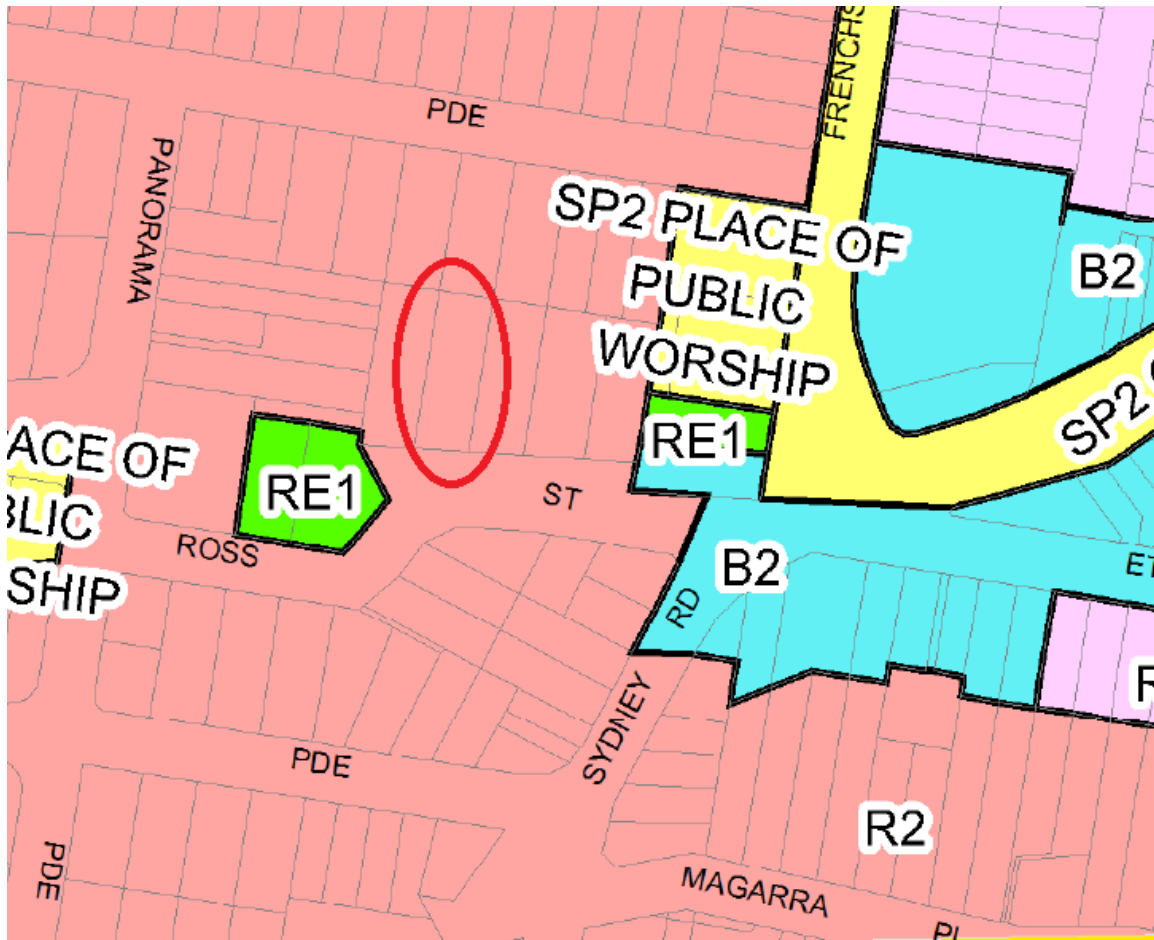
The proposed addition has been designed in a manner, which is sensitive to the circumstances of neighbouring properties and ensures that a high standard of amenity is provided to future residents.

A non-compliance arises in relation to overall building height due mainly to the fall in the land towards the Ross Street frontage and desire to maintain a consistent roof pitch with the lower level. Accordingly a clause 4.6 variation from the development standard is sought. Please refer to section 5.0 of the SEE.

The applicant is also taking the opportunity to review and enhance the landscape content on-site. A detailed landscape strategy has been composed and submitted with the development plans.

4.0 MANLY LEP 2013

The land is zoned *R2 Low Density Residential* under Manly LEP 2013. A dwelling house is permissible within the zone with development consent. Alterations and additions are ancillary to the permissible use.



Zoning Extract – MANLY LEP 2013

<p>2.3 Zone objectives and Land Use Table</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 R2 Low Density Residential</u></p> <p>1 Objectives of zone</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	<p>The proposed addition to a 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>4.3 Height of buildings</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>(b) to control the bulk and scale of buildings,</p> <p>(c) to minimise disruption to the following:</p>	<p>The proposed building height and roof form is consistent with the prevailing character of the precinct and importantly to the lower level roof profile.</p> <p>The proposed addition encroaches slightly into the maximum 8.5m building height control.</p>	<p>Yes</p> <p>Clause 4.6 Variation Sought and justified in this instance.</p>

(i) views to nearby residential development from public spaces (including the harbour and foreshores),	There are no significant views to be gained of residential development from public places.	Yes
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),	There are potential water views to be gained from the property to the rear (No 11 Ellery Parade) across the dwelling. A view analysis plan accompanies the development plans. It should be noted that a low pitch roof has been incorporated into the design so as to maximise viewing opportunities. Further discussion will be provided later in this report.	Reasonable view sharing achieved in the context of precinct and site circumstances.
(iii) views between public spaces (including the harbour and foreshores),	There are no specific view corridors between public places likely to be gained across the subject site.	Yes
(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,	Shadows cast by the development are projected in a sweeping motion across the frontage of the site and partly over adjoining dwellings for a short period of time during the winter solstice. There is no concentration of additional shadow adversely affecting public or private open spaces. The rear yards of adjoining dwellings will continue to benefit from full solar access.	Yes
(e) to ensure the height and bulk of any proposed building or structure in a	The subject site is not in and does not adjoin prominent	Yes

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.	bushland or any other environmentally sensitive land.	
(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.	The height control applicable to the precinct is 8.5m. The proposed maximum height slightly exceeds this limit for a small portion of the ridge.	Refer to justification provided pursuant to clause 4.6 of the LEP
4.4 Floor space ratio		
(1) The objectives of this clause are as follows:		
(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,	The proposed addition will create a proportionate dwelling on-site consistent with the scale of other modern dwellings within the visual catchment of the site.	Yes
(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,	There are no prominent landscape or townscape features to be viewed from the subject site or nearby properties. The proposed FSR at 0.34:1 is well below the maximum permitted on-site.	Yes
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,	The proposed addition is contained within the footprint of the existing dwelling. A large landscaped front yard will eventuate as part of the proposal. There is no detrimental impact on landscaping on-site or within the precinct.	Yes
(d) to minimise adverse environmental impacts on the use or enjoyment of	There is no environmental impact arising, which would	Yes

<p>adjoining land and the public domain,</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>reduce the enjoyment or use of adjoining land. No new driveway crossings are proposed.</p> <p>Not applicable.</p> <p>The maximum FSR applicable to the site is 0.45:1.</p> <p>The proposed FSR is 0.34:1.</p>	<p>Yes</p> <p>Yes</p>
<p>4.6 Exceptions to development standards</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>A clause 4.6 justification for the variation sought is provided under Section 5.0 of the tis report.</p>	

<p>5.10 Heritage conservation</p> <p>(1) Objectives</p> <p>The objectives of this clause are as follows:</p> <p>(a) to conserve the environmental heritage of Manly,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</p> <p>(c) to conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</p>	<p>The subject site is not heritage listed and is not within a heritage conservation area. There are no heritage items in the vicinity of the site.</p> <p>No heritage impacts arise from the proposal.</p>	<p>Yes</p>
<p>6.1 Acid sulfate soils</p> <p>(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</p> <p>(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>Class of land Works</p> <p>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>6.4 Stormwater management</p> <p>(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.</p>	<p>The addition is effectively contained with the existing footprint of the dwelling. Down pipes will connect into the existing drainage system.</p>	<p>Yes</p>

<p>(2) This clause applies to all land in residential, business, industrial and environmental protection zones.</p>	<p>The clause applies to the subject land.</p>	<p>Yes</p>
<p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p>	<p>The proposed works are effectively contained within the existing building footprint. The landscape content on-site will be enhanced as part of the proposal.</p>	<p>Yes</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>The proposed works do not generate the need for stormwater detention on-site. A vast landscape area exists onsite enabling natural absorption.</p>	<p>Yes</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>The proposed works will not give rise to adverse stormwater impacts to adjoining properties and native bushland.</p>	<p>Yes</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>Stormwater from the site can be collected and effectively disposed of via gravity to flow to Council's infrastructure in Ross Street.</p>	
<p>6.5 Terrestrial biodiversity (1) The objective of this clause is to maintain terrestrial biodiversity by: (a) protecting native fauna and flora, and (b) protecting the ecological processes necessary for their continued existence, and (c) encouraging the conservation and recovery of native fauna and flora and their habitats.</p>	<p>The site is not subject to biodiversity considerations.</p>	<p>Yes</p>

<p>This clause applies to land identified as “Biodiversity” on the Terrestrial Biodiversity Map.</p>		
<p>6.6 Riparian land and watercourses (1) The objective of this clause is to protect and maintain the following: (a) water quality within watercourses, (b) the stability of the bed and banks of watercourses, (c) aquatic and riparian habitats, (d) ecological processes within watercourses and riparian areas. (2) This clause applies to all of the following: (a) land identified as “Watercourse” on the Watercourse Map,</p>	<p>The site is not near a watercourse.</p>	
<p>6.8 Landslide risk (1) The objectives of this clause are to ensure that development on land susceptible to landslide: (a) matches the underlying geotechnical conditions of the land, and (b) is restricted on unsuitable land, and (c) does not endanger life or property. (2) This clause applies to land identified as “Landslide risk” on the Landslide Risk Map.</p>	<p>The site is not subject to landslip considerations.</p>	
<p>6.9 Foreshore scenic protection area (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. (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>The subject site is not located within a scenic protection area. The proposed works are well distant from the foreshore.</p>	<p>Yes</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 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>In the main the works will improve the appearance of the dwelling and are proportionate to the land size and existing dwelling.</p> <p>There are no significant overshadowing or foreshore implications.</p> <p>There will be no loss of significant views in the context of future landscape works designed to beautify the site and provide privacy screening.</p>	
<p>6.12 Essential services</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 addition does not increase run off. The new roof area will be connected to the existing domestic drainage of the dwelling.</p> <p>.</p> <p>NA to the circumstances of the proposed development</p>	<p>Yes</p> <p>NA</p>

5.0 CLAUSE 4.6 JUSTIFICATION

Subject Land.

The subject site is known as No 6 Ross Street Seaforth and is situated on the northern side of Ross Street, west of the commercial precinct of Seaforth.

The subject site is legally identified as Lot 9 in DP 1142062.

Clause 4.6 Submission- Building Height

The following request is made pursuant to Clause 4.6 of the *Manly Local Environmental Plan 2013* requesting a variation to the height development standard contained in clause 4.3 of the instrument.

The Development Standard and Contravention

Clause 4.3 of the *Manly Local Environmental Plan 2013* provides that a building on the subject site is not to exceed a height of 8.5m.

‘Building Height’ is defined by the Dictionary to the MLEP 2013 as:

building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The proposed development consists of alterations to the ground level and lower ground level and an upper level addition to an existing residential dwelling. The proposed encroachment into the building height plane is evident in the vicinity of the ridge of the pitched roof.

The encroachment is largely due to the slope in the land towards the street frontage, the existing lower ground (which sits below natural ground) and the desire to maintain a consistent roof profile with the lower level.

The adjoining owners were consulted about the proposal. Neighbours requested a reduction in the roof pitch to assist with maintaining a reasonable view. The applicant reduced the roof pitch to address neighbour input into the design process.

The proposed upper level complies with or is below the building height limit for the majority of the building however the height is exceeded by a maximum amount at the very peak of the roof pitch of 0.79m.

The extent of encroachment into the height plane is illustrated on the architectural plans.

Clause 4.6 of the instrument enables the development standard to be varied.

Written Request

The following considers the proposed variation in respect of the clause 4.6 provisions.

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

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

Comment:

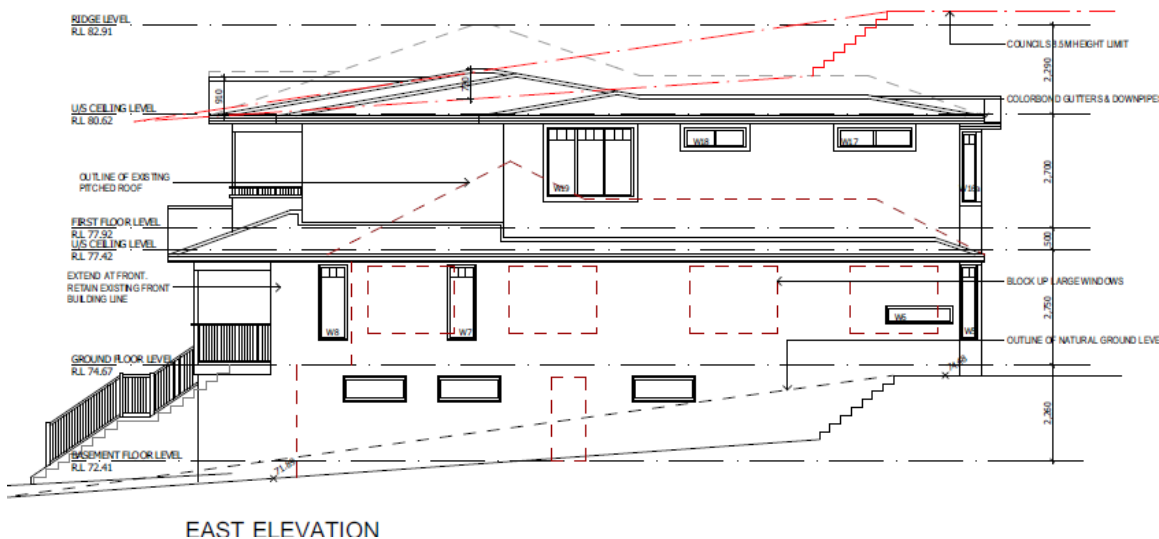
Clause 4.6 of the instrument provides flexibility when applying development standards.

The proposed development has been 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 proposed development maintains a compliant floor space. The proposed development inclusive of the upper level addition

sits well within the maximum FSR permissible for the subject site. The variation does not manifest in an overdevelopment of the site.

The height variation is substantially attributable to the fall in the site and the excavated existing ground floor level created by the lower ground floor. The proposed upper level creates only a two storey appearance across the rear elevation. Notably the proposal would comply with the height control relative to pre-existing ground levels as indicated on the elevation plan below:



The variation to the height does not result in any significant adverse impacts to adjoining properties nor does it compromise or otherwise restrict the future orderly development of any adjoining property.

No adverse planning consequences (shadowing, privacy, visual impact, urban design/streetscape, neighbourhood character) arise from the variation. Rather, in this particular case the variation facilitates a good design outcome in terms of amenity, built form and streetscape presentation. The proposed upper level enables the retention of vast landscaped areas within the large site.

The proposed development will sit comfortably in its context in terms of scale, massing and form. The development is compatible with nearby developments which experience a similar level of fall and cross fall in the land.

For reasons expressed in this submission the ‘flexibility’ provided by clause 4.6 of the LEP facilitates a better design outcome on the site in terms of minimising disturbance to site conditions including the pool in the rear yard.

- (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 MLEP 2013 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

An assessment of the development against the objectives of clause 4.3 of the MLEP 2013 is found subsequent in this written request.

Compliance - unnecessary

The proposed development proffers alternative means of achieving the objectives of the height standard. As mentioned below, the objectives of the height standard are to facilitate reasonable residential built form (in conjunction with the FSR standard), whilst at the same time to minimise visual impacts and overshadowing. The proposed development provides a dwelling with a proportionate built form far lower than maximum FSR permitted, yet provides significant on-site residential accommodation without comprising the amenity of the surrounding area in terms of visual privacy and solar access. Side setbacks from the proposed upper level are generous at 2.3m to both boundaries.

The variation to the height control arises from the topography of the property. The exceedance does not result in a building that is excessively

bulky as the site offers a substantial front setback plus a large verge within the road reservation. The proposal maintains the large landscaped areas on-site.

The area where the height variation occurs is located centrally at the point of the roof ridge and well distant from all boundaries.

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

Compliance - unreasonable

There would be no purpose served if strict compliance was required by the consent authority and indeed an inferior planning outcome would result by simply providing a flat roof or providing an angled roof form.

The minor 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 would have a similar performance in regard to overshadowing, and bulk/scale, yet would require amendments to the development which would compromise the desired urban design outcome and possibly erode landscape areas on-site.

To strictly comply with the proposed development standard would require a far flatter roof type that would not be in keeping with the prevailing roof pattern in the locality and existing roof style of the subject dwelling. It should be noted that compliant roof and standard floor to ceiling height is proposed to the ground level and proposed upper level in accordance with DCP provisions.

In terms of urban design the proposed upper level addition is well articulated and creates a well-defined yet unobtrusive 'top' to the dwelling. The architectural integrity of the development would be compromised by the strict application of the height control standard.

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

Environmental planning grounds

A written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. (cl 4.6(3)(b) and cl 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 height control is attributable to the topography of the site and the existing excavated lower ground floor level. The variation is limited to part of the upper level roof only as a consequence of the fall and cross fall in the land. The departure to the statutory height control is minor in a numeric sense and is beneficial from a town planning perspective having specific regard to the objectives of the control and the objectives of the zone and site topographical circumstances.

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 Director-General has been obtained.

Comment:

The matters required to be demonstrated by subclause (4) have been adequately addressed.

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. Furthermore a high standard of construction will be achieved.

The objectives of the *R2 – Low Density Residential* zone are:

- *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.*

The proposed development is consistent with the objectives as:

- The proposal provides for an upper level addition and ground floor alterations to an existing residential dwelling. The proposal maintains the existing low density residential nature of the locality in keeping with the zone objective; and
- The proposal is purely residential in nature and doesn't propose any other land use.

(1) The objectives of this clause are as follows:

- (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.*
- (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.*

The proposed height variation is acceptable from a town planning perspective having specific regard to the objectives because:

- The height and scale of the proposed development is compatible with the evolving and desired character of the area.
- The development provides for a standard low roof pitch to be consistent with the lower level of the dwelling.
- No adverse impacts arise in respect of development options in the locality.

The height and scale of the proposed development is compatible with the desired character of the area. Standard floor to ceiling heights are proposed.

Existing street trees assist in screening the dwelling and mitigating the height non-compliance.

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

The proposal inclusive of the upper level addition is well setback from any adjoining dwellings and particularly the front and rear boundaries of the site. The orientation of the site will ensure that all additional shadows cast are directed toward the street frontage. Accordingly the upper level addition with a minor height encroachment will not give rise to any adverse impacts on adjoining dwellings with regards to solar access and privacy loss. The

proposal will not restrict access to any view corridors in the context of the future landscaping strategy for the site.

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 limited footprint of the upper level and its substantial setbacks minimise its visual influence on the streetscape.

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 Director-General must consider:

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

Comment:

The 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 in this instance.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation 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.*

Comment:

The clause is not relevant to the circumstances of the proposal as the site is within a residential zone and does not involve land subdivision.

- (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).*

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.*

Comment:

The proposed development does not contravene the provisions listed above.

Conclusion

This written request has successfully demonstrated that all performance criteria, standards and objectives of Northern Beaches Council and the NSW State Government are achieved notwithstanding the minor numerical non-compliance. In the circumstances the consent authority and Director-General should be satisfied that this written request justifies the subject non-compliance.

6.0 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>3.1 Streetscapes and Townscapes</p> <p><u>Streetscape</u></p> <p>Objectives 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.</p> <p>Objective 2) To ensure development generally viewed from the street complements the identified streetscape.</p> <p>Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.</p> <p><u>Townscape</u></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>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 in reference to the DCP objectives for 'streetscape'.</p>	<p>Yes</p>
<p>3.1.1.3 Roofs and Dormer Windows</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</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.</p> <p>There is no significant impact on views relative to the landscape strategy proposed for the site.</p> <p>There are no dormer windows proposed.</p>	<p>Yes</p> <p>Yes</p> <p>NA</p>

<p>where there is no precedent in the streetscape, especially on adjoining dwellings.</p>		
<p>3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)</p> <p>Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties.</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>3.4.1 Sunlight Access and Overshadowing</p> <p>Objective 1) To provide equitable access to light and sunshine.</p> <p>Objective 2) To allow adequate sunlight to penetrate:</p> <p><input type="checkbox"/> private open spaces within the development site; and</p> <p><input type="checkbox"/> private open spaces and windows to the living spaces/ habitable rooms of both the</p>	<p>The addition has a minimal impact on the amenity of neighbouring properties having regard to matters of privacy, view loss, solar access and general amenity. Windows to the proposed upper level in the main are provided to the respective street frontage.</p> <p>No significant adverse impacts arise from the proposed development when considered in reference to the DCP objectives.</p> <p>The proposed addition has a minimal shadowing impact given the orientation of the site. Please refer to the shadow diagrams.</p> <p>No significant adverse impacts arise from the proposed</p>	<p>Yes</p> <p>Yes</p>

<p>development and the adjoining properties.</p> <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"> <input type="checkbox"/> encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and <input type="checkbox"/> maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south. <p>3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties</p> <p>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>development when considered in reference to the DCP objectives. The proposed upper level is well conceived relative to overshadowing implications.</p> <p>There are no significant additional shadow impacts on the neighbouring northern or eastern properties.</p> <p>No significant adverse impacts arise from the proposed development when considered in reference to the DCP objectives.</p>	<p>Yes</p>
<p>3.4.2 Privacy and Security</p> <p>Objective 1) To minimise loss of privacy to adjacent and nearby development by:</p> <ul style="list-style-type: none"> <input type="checkbox"/> appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; <input type="checkbox"/> mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings. <p>Objective 2) To encourage awareness of</p>	<p>The addition will not result in significant loss of privacy to any adjoining 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>neighbourhood security. See also paragraph 4.1.5.3 Principal Private Open Space.</p> <p>3.4.2.1 Window Design and Orientation</p> <p>a) Use narrow, translucent or obscured glass 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>3.4.2.3 Casual Surveillance</p> <p>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>3.4.2.4 Acoustical Privacy (Noise Nuisance)</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>Windows are oriented generally towards the front and rear of the dwelling. There will be no viewing conflict from opposing windows between adjoining dwellings and the subject dwelling.</p> <p>The proposed upper level addition will provide better casual surveillance of the street and rear pool area.</p> <p>The applicant proposes to provide a coordinated landscape strategy across the site so as to beautify, compliment the built form and provide privacy screening.</p> <p>There are no noise sources near the dwelling.</p> <p>There is no significant traffic/street noise.</p> <p>The addition is for an upper level addition. No significant acoustic impacts arise from the proposal given the residential nature of the use.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>NA</p> <p>NA</p> <p>Yes</p>
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	There is minimal change to any of the dwelling elements - open space driveways, parking etc.	
<p>3.4.3 Maintenance of Views</p> <p>Relevant DCP objectives to be satisfied in relation to this paragraph include the following:</p> <p>Objective 1) To provide for view sharing for 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>Views from the site of the water can be gained. Views can be gained diagonally across the subject site also.</p> <p>Landscaping recently removed from the rear yard comprising of non-endemic species will be replaced to protect the privacy of residents using the rear yard and pool area.</p> <p>As such viewing opportunities diagonally across the site will be obscured by future privacy screening.</p> <p>Notwithstanding a low roof pitch is proposed coupled with standard floor to ceiling heights aimed at achieving view sharing.</p>	Yes in the context of the site and landscape strategy proposed for the site.
<p>3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)</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>	Yes

<p>4.1 Residential Development Controls</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 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>Noted</p> <p>Noted</p> <p>The proposal is for a quality addition to an existing dwelling, which is well setback from adjoining dwellings.</p> <p>No significant adverse amenity impacts arise.</p> <p>The landscaping content on-site will be enhanced and embellished. No trees are required to be removed. The addition sits comfortably with the design of the dwelling.</p> <p>There are no significant adverse effects on the character, amenity and natural environment.</p> <p>NA. 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>Yes</p> <p>Yes</p> <p>Yes</p>
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<p>4.1.1 Dwelling Density and Subdivision</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>4.1.2.1 Wall Height</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>4.1.2.2 Number of Storeys</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 permitted wall height in the vicinity is 6.5m.</p> <p>The proposal includes a standard floor to ceiling height and indenting of the upper level from all elevations to avoid a continuous wall height.</p> <p>The proposal complies with the envelope controls thus ensuring the proposed upper level is setback the required distance from side boundaries.</p> <p>The proposal provides for a minor encroachment into the 8.5m maximum permissible height limit. A Clause 4.6 variation pursuant to MLEP 2013 is included elsewhere within this SEE.</p>	<p>Yes</p> <p>Variation Sought and justified</p>

<p>4.1.2.3 Roof Height</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>Roof Pitch</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 proposal includes a low pitched roof profile well under the 2.5m height.</p> <p>The roof pitch creates a maximum height of 1.4m and includes a roof pitch well below of 25 degrees.</p>	<p>Yes</p> <p>Yes</p>
<p>4.1.3 Floor Space Ratio (FSR)</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 0.34:1 sits within the permitted FSR of 0.45:1.</p> <p>The dwelling retains a domestic scale and form. No significant impacts arise in respect of views or shadowing.</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>The addition sits comfortably with the architectural form (including roof form) of the existing dwelling and neighbouring buildings noting that there is considerable architectural diversity in the street.</p> <p>The addition follows the existing building wall and setback of the ground floor.</p> <p>Adjoining properties are not adversely</p>	<p>Yes</p> <p>The proposed upper level is indented from the side and front elevations to provide articulation and minimise bulk.</p> <p>Adjoining properties are not</p>	

<p>impacted by overshadowing, view loss or privacy issues.</p>	<p>adversely affected by overshadowing, view loss or privacy issues.</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 significant adverse impact on the amenity of adjoining properties.</p>	
<p>4.4.2 Alterations and Additions 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 dwellings streetscape presentation.</p>	<p>Yes</p>

7.0 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 pursuant to clause 4.6 of the LEP.

The proposed development is appropriate in consideration of the streetscape objectives, siting requirements and protecting neighbour amenity.

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.

8.0 CONCLUSION

The proposal is for an upper level addition and ground and lower ground level alterations to an existing dwelling. The proposal represents a vast improvement to the built form existing on-site and with strong streetscape appeal. A high level of landscape treatment will also compliment the built form and provide a high degree of privacy to the rear yard.

The owners of the subject property consulted with adjoining owners prior to finalising the plans. The design was amended to reduce the roof pitch and overall building height.

No significant adverse impacts arise from the proposal.

The proposed development is permissible in the zone and is consistent with zone objectives.

The proposal despite involving a breach of the building height control, presents a compliant FSR and setbacks.

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