



northern
beaches
council

Northern Beaches Local Planning Panel Report

2017/452703

DA #	224/2017
Site Address	7-9 Marine Parade, Manly SP 12796
Proposal	Alterations and additions to the existing shop top housing development
Officer	Claire Downie

SUMMARY:

Application Lodged:

25 September 2017

Applicant:

Ms T B Holland

Owner:

Ms T B Holland

Estimated Cost:

\$496,725

Zoning:

MLEP, 2013 – B1 Neighbourhood Centre

Heritage:

Not applicable

NSW LEC:

Not applicable

Notification:

28 September – 16 October 2017 and 14-30 November 2017
(Renotified to correct description of works)

Submissions received:

One

Site Inspected:

28 November 2017

LEP (4.6) Variations proposed:

Height of Building

DCP Variations proposed:

Nil

Recommendation:

Approval

Subject Property and surrounding area



The subject property is commonly known as 7-9 Marine Parade, Manly and legally known as SP 12796. The site is located on the southern side of Marine Parade. The property is irregular in shape, has a frontage of 17m to Marine Parade, an average depth of 31.5m and an overall site area of 580m². The property currently contains a three-storey shop top housing development with vehicular access via an existing driveway from Bower Lane to an existing hardstand area to the rear of the existing dwelling. The property slopes approximately 1m from south to north.

The adjacent property to the west, at 10 Marine Parade, contains a four-storey residential flat building. The adjacent property to the south, at 3 Bower Lane, Manly contains a two-storey detached dwelling house. Development in this area consists of detached dwellings, shop top housing and residential flat buildings.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

Recent relevant applications on site include:

DA24/2009: Alterations and additions to existing mixed use building comprising of nine (9) residential units, one (1) shop, one (1) restaurant, extension, basement garage, third floor addition, rooftop terrace and landscaping. Refused under delegation on 3 February 2009.

DA8/2013: Construction of an awning attached to 7-9 Marine Parade, extending over the public walkway of Marine Parade and Bower Street, Manly. Approved by DAU on 17 April 2013.

DA8/2013 – Part 2: Section 96 to modify approved Construction of an awning attached to 7-9 Marine Parade extending over the public walkway of Marine Parade and Bower Street Manly - involving change of the approved fixed awning to a retractable awning. Approved under delegation on 13 July 2016.

DA189/2013: Alterations and additions to an existing building including internal alterations and three (3) new windows - Unit 3. Approved under delegation on 29 November 2013.

DA214/2013: Alterations and additions to an existing Residential Flat Building including a deck and new doors to replace window to Unit 9 and a roof over the walkway to the common property. Approved by DAU on 20 January 2014.

DA131/2016: Alterations to an existing building including replacement of front windows and door with two (2) bi-fold doors and stainless steel balustrade – Bower Restaurant. Approved under delegation on 23 June 2016.

Description of proposed development

The proposal seeks consent for the following works:

- Internal reconfiguration; and
- New balcony.

Internal Referrals

Engineering Comments

Council's Engineer offered no objections to the proposal.

Building Comments

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Waste Comments

Council's Waste Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Natural Resources Comments

Council's Natural Resources Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Coastal Management Comments

Council's Coastal Management Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

External Referrals

Aboriginal Heritage

The proposal was referred to the Aboriginal Heritage Office. The following comments have been received:

"No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.

Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted."

AUSGRID

The proposal was referred to Ausgrid. No comments had been received by Council at the time of writing this report.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

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**

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and Apartment Design Guide

The proposed development involves alterations and additions to an existing residential flat building. However, SEPP 65 and the ADG do not apply in this case, as the development does not involve the substantial redevelopment or the substantial refurbishment of the building.

State Environmental Planning Policy No. 71 – Coastal Protection

The subject site is located within the Coastal Zone, according to the State Environmental Planning Policy No. 71 – Coastal Protection. The matters for consideration under the SEPP are addressed as follows:

- (a) the aims of this Policy set out in clause 2,**

The proposed development is consistent with the objectives of the SEPP.

- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*

The proposed development does not impact upon public access along the foreshore. As the proposed development does not relate to public access along the foreshore, requirement to improve this access is not reasonable.

- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

As the proposed development does not relate to public access along the foreshore, requirement to provide new public access is not reasonable.

- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,*

The proposed development is minor in nature and is ancillary to the existing use of the site as a shop top housing development.

- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*

The proposed development will not result in any unreasonable amenity impacts, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

The proposed development does not unreasonably impact upon the scenic quality of the New South Wales coast.

- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*

The proposed development is located at the third storey of the existing shop top housing development, so is not anticipated to impact upon the conservation of animals and their habitats.

- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats*

The proposed development is located at the third storey of the existing shop top housing development and does not involve works within the nearby waters, so is not anticipated to impact upon the conservation of fish and their habitats.

- (i) existing wildlife corridors and the impact of development on these corridors,*

The proposed development is located at the third storey of the existing shop top housing development, so is not anticipated to impact upon wildlife corridors.

- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

The proposed development is located at the third storey of the existing shop top housing development, so is not anticipated to impact upon coastal processes and hazards. Similarly, coastal processes and hazards are not anticipated to impact upon the development.

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,*

The proposed development is located at the third storey of the existing shop top housing development, so is not anticipated to result in any conflict between land-based and water-based coastal activities.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

The proposed development is not anticipated to impact upon cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.

- (m) *likely impacts of development on the water quality of coastal waterbodies,*

The proposed development is located at the third storey of the existing shop top housing development, so is not anticipated to impact upon the water quality of coastal waterbodies.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*

The subject site does not involve or impact upon any items of heritage, archaeological or historic significance.

- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*

No draft local environmental plan applies to the site.

- (p) *only in cases in which a development application in relation to proposed development is determined:*

- (i) *the cumulative impacts of the proposed development on the environment, and*

- (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

The proposed development is not anticipated to result in any unreasonable environmental impacts, or any significant increase to water and energy usage.

Manly Local Environmental Plan 2013

The subject site is located in Zone B1 Neighbourhood Centre under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone B1 Neighbourhood Centre

Objectives of zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

The proposed development retains the existing ground floor retail and business uses that serve the needs of the people who live or work in the surrounding neighbourhood.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	9.6m	No	See comment below.

4.6 Exceptions to development standards

Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	8.5m
Proposed	9.6m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	12.94% to development standard 0% to existing non-compliance

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MELP 2013 are:

(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,*

Comment: The proposed development does not result in additional height above the existing maximum building height. Further, the proposed development does not alter the existing roof form. As such, the works are consistent with the existing and prevailing building height, and the desired streetscape character in the locality.

- (b) *to control the bulk and scale of buildings,*

Comment: The proposed open form balcony does not unreasonably add bulk to the building. Further, the proposed development does not alter the site’s compliance with the floor space ratio development standard, which controls 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),*

Comment: The proposed development does not result in any unreasonable view loss, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Maintenance of Views.

- (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,*

Comment: The proposed development does not result in any unreasonably overshadowing, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Sunlight Access and Overshadowing.

- (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.*

Comment: Not applicable. The subject site is zoned B1 Neighbourhood Centre.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B1 Neighbourhood Centre zone.

The underlying objectives of the B1 Neighbourhood Centre zone are as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

The proposed development retains the existing ground floor retail and business uses that serve the needs of the people who live or work in the surrounding neighbourhood.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

- (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.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the height of buildings development standard.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed development achieves a better outcome, as it creates private open space for the subject unit, without resulting in unreasonable amenity impacts on adjacent sites.

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

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: The applicant has provided the following written request justifying the contravention of the height of building development standard:

“1. Introduction

This Clause 4.6 Variation request has been prepared in support of the development application for the proposed balcony and alterations and additions to existing shop top housing at unit 6, 7-9 Marine Parade Manly (SP 12796).

This Clause 4.6 Variation has been submitted to assess the proposed non-compliance with the height of building standard (Clause 4.3) for the proposed balcony servicing unit 6 of the building and has been prepared in accordance with the requirements of Clause

4.6 of Manly Local Environmental Plan 2013 (MLEP 2013) which provides the following aims and objectives:

- (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.

In summary the following variations are proposed:

MLEP 2013 Clause	MLEP 2013 Development Standard	Proposed Development Non Compliance	Percentage of Variation
Clause 4.3 Height of Buildings	8.5m	The proposal seeks development consent for a balcony, with the steel frame of the balcony at a height of 9.6m	1.12%

Whilst the proposal seeks a variation of 1.12%, this non-compliance is not indicative of the impact associated with the works. The building currently affords a height of approximately 10.7m therefore the existing development is considered to be non-compliant with MLEP 2013. The handrail is a height of 8m, as measured from natural ground level, however, the steel frame and awning supporting the balcony will sit at height of 9.6m, as measured from ground level at its highest point, which is noncompliant. The location of the balcony sits below the uppermost point of the building and therefore will not alter the approved maximum building height of 10.7m.

In accordance with Clause 4.6 of MLEP 2013 Council is required to consider the following:

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.

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard.

2. The Standards Being Objected to

2.1 Clause 4.3 (Height of Buildings) of the Manly Local Environmental Plan 2013

The development standard sought to be varied is Clause 4.3 (Height of Buildings) of Manly Local Environmental Plan 2013 (MLEP 2013) which provides as follows.

4.3 Height of Buildings

(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.

Pursuant to Clause 4.6, the proposed development seeks exception to the 8.5m building height standard as identified on the Height of Building Maps.

The site is zoned B1 Neighborhood Centre under the provisions of MLEP 2013, whereby shop top housing is permitted with development consent.

2.2 The objectives/underlying purpose of the clause

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore while there is a specified numerical control for height of buildings, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Section 3 of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard.

2.3 Proposed variation to standards

The proposed development seeks to provide for a balcony and alterations and additions to existing shop top housing at 6/7-9 Marine Parade, Manly. The proposed balcony will be located at the northern building elevation. The glass handrail of the balcony will have a height of less than 8m however, the steel frame and awning supporting the balcony will have a height of 9.6m at its heights point which is noncompliant. The proposed breach of Clause 4.3 of MLEP 2013 is minor and will not cause any undue environmental impact. Further the proposal will not be higher than the existing building and is therefore considered to general comply. The proposed development will not impact upon view sharing and will not cause no undue environmental impact upon the surrounding development in the locality.

3. Proposed Variation to Clause 4.3 Height of Buildings

Pursuant to Clause 4.6 of MLEP 2013, it is sought to vary the 8.5m building height standard applicable pursuant to Clause 4.3 of MLEP 2013. Clause 4.6(4)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

3.1 Objectives of the standard?

The objectives of the standard as stated in MLEP 2013 are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

The proposed balcony will be located at the northern elevation of the building and will not be higher than the existing and approved building height and roof form. The proposal is consistent with the existing built form on the site and considering the balance of the proposed works are located within an existing building the addition seeks to create a consistent building line.

(b) to control the bulk and scale of buildings,

The proposal will not increase the bulk and scale of the building on site, rather the proposed balcony addition will create a consistent building line and form. Accordingly, the balcony will not increase the appearance or the bulk and scale of development on the site and therefore will not cause any adverse visual impact in this respect.

(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),*

The balcony is proposed on the northern elevation of the building and will not compromise view corridors. As such the balcony proposed will not result in any increase to the building height. Overall, there will be no undue amenity impact in terms of solar access, privacy or visual amenity.

(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,

The proposal will not impact upon solar access to public and private open spaces and maintains adequate sunlight access to private open spaces therefore further consideration is not required.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The subject site is not located in in a recreation or environmental protection zone.

(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 existing building currently exceeds the maximum building height of 8.5m. The proposed balcony will not exceed the existing building height therefore, the minor departure from Clause 4.3 is reasonable.

3.2 Objectives of the zone

The site is currently zoned B1 Neighbourhood Centre under MLEP 2013 and the proposal is for a balcony and alterations and additions to existing shop top housing which is permissible with development consent. The proposal is consistent with the B1 zone objective as follows:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

The proposed balcony and alterations and additions to the premises will support the existing use of the building as shop top housing which provides for residential accommodation and commercial premises on the ground floor thereby contributing to the local neighbourhood. The proposal includes works to unit 6 of the existing building and therefore does not propose any changes to any retail premises located at street level or other residential apartments located within the building. The proposal does not propose any changes to the existing use of the building.

3.3 Establishing if the Development Standard is Unreasonable or Necessary

Compliance with this standard would be unreasonable given the existing height of the building exceeds the maximum building height. The proposed building height departure will have no undue impact on the streetscape or surrounding properties and is consistent with the desired character of the locality.

The proposed balcony exhibits a building height of 1.1m above the building height limit, with the balcony located at the northern elevation of the building. Overall this breach is not considered to have any additional impact to the streetscape to that of a compliant scheme.

The proposed development is highly compatible with the existing residential and commercial development on the site and surrounding land uses in terms of visual amenity.

It is considered that the Clause 4.6 Variation is well founded for the following reasons:

- Consistency is achieved with the existing and desired character of the locality.*
- The development will be located on the northern elevation of the building, hence having no visual impact of the amenity of the subject site.*
- The proposed balcony is compatible with surrounding development in terms of visual appearance, scale and design of the existing building.*

In this instance the proposed variation is considered to be acceptable. The proposed development will integrate with the existing built form and will not impact on the amenity of the subject site or surrounding locality. Overall, the scale, height and design of the development will ensure the fabric of the building is maintained whilst achieving the consistency with the objectives of the zone.

3.4 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The variation to the development standard is considered well founded because, for the following reasons:

- The proposed development is entirely consistent with the underlying objective or purpose of the standard as demonstrated in Section 3.1.*
- The proposed balcony is consistent with the existing shop top housing for the site, and will not exacerbate any existing height non compliance.*
- The proposed development will not adversely impact on the amenity of adjoining sites in relation to heritage items or views.*
- It is considered the proposed development is compatible with the existing character of the site.*

3.5 Overview

For the reasons outlined above, it is considered that the variation to Clause 4.3 of MLEP 2013 is well-founded in this instance and it should be supported in the circumstances. Furthermore the objection is considered to be well founded for the following reasons:

- The proposal is entirely consistent with the underlying objectives and purposes of the development standard.*
- The scale and design of the balcony will not adversely impact on the character of the streetscape or neighbouring amenity.*
- Strict compliance with the standard would hinder the attainment of the objects of the EP&A Act;*
- No undue impacts are associated with the proposed variation to the building height.*

Overall, it is considered that the proposed variation to the height of buildings control is appropriate and can be justified having regard to the matters listed within MLEP 2013 Clause 4.6.

4. Conclusion

It is requested that council supports the proposed variation to Clause 4.3 of MLEP 2013 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
- There are sufficient environmental planning grounds to justify contravening the development standard.*
- No undue environmental impacts are introduced as a result of the proposal.*
- There is no public benefit in maintaining strict compliance with the standards.*

Given the above justification provided above this Clause 4.6 Variation is well founded and should be favorably considered by Council."

- (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*

Comment: The applicant's written request has adequately addressed the relevant matters.

- (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.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone in the MLEP 2013.

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

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed.

Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.5	Terrestrial Biodiversity	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.5 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.9 of the Manly LEP 2013.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013:

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	✓
Heritage – In Vicinity	NA	
Landscaping Design	NA	✓
Landscape/Tree Preservation	NA	✓
Sunlight Access and Overshadowing	✓	✓
Privacy and Security	✓	✓
Maintenance of Views	✓	✓

Comment:

3.1 Streetscapes and Townscapes

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

The proposed development does not result in any additional walls, fencing or car parking.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

The proposed works are complementary to and consistent with the existing streetscape, as a number of examples of developments containing balconies exist along Marine Parade.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Not applicable.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The proposed external works are minor and located on the northern elevation of the subject site, so are not anticipated to result in any additional overshadowing to adjacent sites. As such, an equitable level of sunlight access is retained.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The proposed development will create additional private open space, without unreasonably impacting on existing private open space or windows of the subject site or adjacent site.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed external works are minor and located on the northern elevation of the subject site, so do not result in unreasonable additional overshadowing to the windows, living rooms and to principal outdoor areas of the subject site or adjacent sites. The proposed development does not add unreasonable bulk, and does not impact upon the existing southern setback of the building.

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposed development retains an adequate side setback to the adjacent property to the north. The proposed balcony is orientated to the north east, across the front yard of the neighbouring property, which is currently wholly visible from the public foreshore access way. Additionally, the proposed balcony includes full height privacy screening to the north elevation, in order to mitigate direct viewing. As detailed in the Noise Assessment submitted with the application and further to the recommended condition of consent no. ANS02, the dimensions of the proposed balcony prevent excessive usability of the space, subsequently mitigating noise impacts. Further, a condition of consent has been applied, ensuring that the ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the *Protection of the Environment Operations Act 1997*, to protect the amenity of neighbouring properties. As such, the proposed balcony does not result in any unreasonable additional visual or acoustic privacy impacts.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposed development provides adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is not unreasonable, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

The proposed additional balcony encourages awareness of neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

The proposed development retains existing view sharing for the subject site and adjacent sites.

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).

The proposed development does not disrupt view to, from or across the site.

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.

The proposed development does not result in view creep.

Part 4 - Development Controls

Site Area:	580m ²	Permitted/ Required	Proposed	Complies Yes/No
Setbacks		0m	1.7m	Yes

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the visual aesthetic amenity of the area.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed development.

79C(1)(a) (iv) - the regulations

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (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

The proposed development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposed development is suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with one submission received from the following objector raising the following concerns:

Submission and Address	Main Issues raised in the submission
1. Confidential	• The balcony result in loss of privacy to my property • The balcony is not in keeping with the existing building • The building is being redeveloped in an ad hoc fashion • The building contains seven units, but only three parking spaces

Comment:

Privacy

The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Privacy and Security.

Building Character

The proposed development is acceptable in relation to streetscape and character for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Streetscape.

Redevelopment of the site

Each development application on site has been assessed on its merits. Any applications that were not assessed as suitable for the site has been refused or amended to comply. As such, while alterations and additions to the building may appear 'ad hoc', each approved development application has been acceptable.

Parking

The proposed development does not result in the intensification of the use of the site. As such, no additional parking is required as a result of this development.

79C(1) (e) - the public interest.

The proposed development is in the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) the dedication of land free of cost, or*
 - (b) the payment of a monetary contribution,*
 - or both.*
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposed development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 (Amendment 8) and is considered to be satisfactory for **approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 224/2017 for Alterations and additions to the existing shop top housing development at 7-9 Marine Parade, Manly be **Approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 224/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA101 Existing Second Floor Plan & Demolition Plan	Rev. A July 2017	Playoust Churcher Architects
DA102 Proposed Second Floor Plan	Rev. A July 2017	Playoust Churcher Architects
DA103 East Elevation	Rev. A July 2017	Playoust Churcher Architects
DA104 North Elevation	Rev. A July 2017	Playoust Churcher Architects

Reference Documentation relating to Development Consent No. 224/2017:

- BASIX Certificate No. A293621 prepared by Playoust Churcher Architects dated 20 September 2017
- Noise Assessment prepared by Day Design Pty Ltd dated 15 January 2018

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

ANS01

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

ANS02

The north western setback of the proposed balcony is to be increased by 430mm. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority, prior to the issue of the Construction Certificate.

Reason: To ensure adequate acoustic and visual amenity for the neighbouring property.

1A(2AP03)

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

2 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

3 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

4 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

5 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

6 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

7 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

8 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

9 (3TS02)

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of Long-nosed Bandicoots through a site induction prior to commencement of works. The site induction is to include information about the conservation significance of this endangered population, their potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site foreman/supervisor. Evidence of the site induction is to be documented and provided to the Principle Certifying Authority.

Reason: To avoid direct physical harm to Long-nosed Bandicoots, it is important that workers are aware of their presence, their conservation significance and the measures in place to protect them.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

ANS03

If a Long-nosed Bandicoot enters the worksite or is found during a survey of holes/stockpiles, works must cease until the bandicoot has safely vacated the worksite. Any injured or dead Long-nosed Bandicoots or Little Penguins found within the worksite must be reported to the National Parks & Wildlife Service (NPWS) (9457 9577) or Northern Beaches Council (9976 1500).

Reason: To mitigate potential impacts to endangered Long-nosed Bandicoots resulting from construction activity associated with the development.

ANS04

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity associated with the development.

ANS05

Any excess materials such as cleaning paintbrushes and lacquers and any water from tool cleaning must not enter the waterway.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within Cabbage Tree Bay Aquatic Reserve throughout the construction period.

ANS06

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To ensure that building associated material/waste does not mobilise, and prevent pollution entering adjacent aquatic habitats within Cabbage Tree Bay Aquatic Reserve.

10 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

11 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

12 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays. Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

13 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

14 (4TS01)

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:30am and 4:30pm.

Reason: Noise and vibration may disturb local native fauna (including species and populations listed as threatened under State or Federal legislation) and discourage their use of adjoining areas.

15 (4TS02)

Before any vegetation/materials/debris stockpiles are removed, a pre-clearance survey for Long-nosed Bandicoot activity and presence is required. Clearing may only proceed if this survey concludes that no Long-nosed Bandicoots are present within the area to be cleared or the immediate vicinity. All clearing must initially be carried out with hand tools to identify whether any Bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no Bandicoots are sheltering within the area to be cleared. Clearing should ideally be carried out at dusk and completed within one day so that Long-nosed Bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

16 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

17 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.