



The subject property is commonly known as 3 Rolfe Street, Manly and legally known as Lot 1 in DP 605127. The site is located on the northern side of Rolfe Street. The property is regular in shape and has a frontage of 6.05m to Rolfe Street, an average depth of 40.5m and an overall site area of 184.4m<sup>2</sup>. The property currently contains a two storey dwelling with no vehicular access. The property has no significant slope from one side of the site to another.

The subject site is a flood affected lot

The surrounding area includes residential development typically semi-detached and detached single and two storey development.

### **Property Burdens and Constraints**

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

### **Site History/Background**

List previous applications and relevant history

### **Description of proposed development**

The proposal is for alterations and additions to the existing semi-detached dwelling including demolition works and:

#### **Ground floor:**

- Internal alterations and rear extension of kitchen/dining.

#### **First floor:**

- 2 bedrooms, rumpus and bathroom.
- Ground floor extension
- Front fence alterations
- Landscaping
- Roof alteration

### **Internal Referrals**

#### **Engineering Comments**

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

#### **Landscaping Comments**

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

#### **Heritage Comments**

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

#### **Flood Comments**

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

Note: Amended plans were received by Council to address initial flooding issues on site. The amended plans received on 26 April 2018 were considered satisfactory, subject to conditions.

## 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*

### **Manly Local Environmental Plan 2013**

The subject site is located in Zone R1 General Residential under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone R1 General Residential**

##### **Objectives of zone**

- *To provide for the housing needs of the community.*

The proposal will not affect the housing needs of the community.

- *To provide for a variety of housing types and densities.*

The proposal maintains housing variety within the residential area.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Existing residential use remains unchanged.

#### **Part 4 Principal development standards**

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

<b>4.</b>	<b>Principal Development Standards</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Complies Yes/No</b>	<b>Comments</b>
4.3	Height of buildings	8.5m	6.1m	Yes	The proposal complies with the clause.
4.4	Floor Space Ratio	0.6:1 110.64m <sup>2</sup>	0.78:1 144.74m <sup>2</sup>	No	See Clause 4.6.

#### **4.6 Exceptions to development standards**

##### Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio 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	0.6:1 (110.64m <sup>2</sup> )
Proposed	0.78:1 (144.74m <sup>2</sup> )
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	30.8%
	34.1sqm

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, 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 floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio 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 4.4 – Floor space ratio of the MELP 2013 are:

(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,*

Comment: The bulk and scale of the proposal is consistent with other semi-detached dwellings within the street with a first floor addition, including Nos. 4, 5 and 6 Rolfe Street. The first floor has been articulated and maintains the existing roof configuration as viewed from the front.

(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,*

Comment: The proposed non-compliance of gross floor area is a result of the proposed first floor, which is sited entirely within the existing building footprint. The works will not obscure and important landscape features on site.

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

Comment: The proposed first floor extension is extended to the north side of the property. The extension will have a maximum height of RL8.43 the proposed extension maintains the existing building height, lower than the existing ridge RL8.48. As such, the works will not be visible from the street.

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

Comment: The proposed development will not result in any unreasonable amenity impacts on adjoining properties in regards to views, privacy or overshadowing.

(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.*

Comment: Not applicable

**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 R1 General Residential zone.

The underlying objectives of Zone R1 General Residential:

- *To provide for the housing needs of the community.*

The proposal will not affect the housing needs of the community.

- *To provide for a variety of housing types and densities.*

The proposal maintains housing variety within the residential area.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Existing residential use remains unchanged.

**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 Floor Space Ratio development standard.

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

Comment: The proposed variation to the Floor Space Ratio allows for an outcome that doesn't reduce usable outdoor living space in a relatively dense area, thereby creating an improved outcome for the site, while retaining the existing residential use and reasonable levels of amenity for adjoining properties.

(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's written request outlines the reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and provides the following environmental planning justification for the contravention of the development standard as follows:

**"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 development has been designed to ensure that the bulk and scale of the dwelling is appropriate for the site and surrounding area while also allowing for the creation of dwelling that adequately meets the needs of the family whom will occupy it.*

*The design and layout of the dwelling has been heavily influenced by precedence of approvals granted in the immediate area in particular No.. 4 Rolfe Street (which was approved by the NSW L&E Court) and also the narrow nature of the lot. The constraints of the site have meant that proposal has made use of allowable variations to Council's control for FSR development standards.*

*It is acknowledged that there are some breaches the setback development standards within the DCP. These variations are a consequence of the existing provisions on the site and width of the lot.*

*Notwithstanding the breaches to prescribed development standards, as depicted within the architectural plans prepared by the project architect, the proposal's bulk and scale is consistent with the existing and desired future character of the Rolfe Streetscape.*

**(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,**

*The proposal allows for 145 square meters of floor area which have been appropriately designed through the provision of a first floor (increasing off the existing attic space). It is acknowledged that the proposed gross floor area is over and above the prescribed numeric standard contained within the Manly LEP by approximately 34 square meters.*

*It is important to note that a number of the lots located on the northern side of Rolfe Street are undersized compared to the surrounding area. The subject site is no exception to this, with a total area of 184.4 square meters. As such the project architects have chosen to make use of Clause 4.1.3.1 of the Manly DCP which allows for consideration of exceptions to the maximum FSR under the Manly LEP for undersized lots. The proposed development has been designed within the parameters of this clause of the Manly DCP and the extent of the variation sought is no greater than what is allowed under the clause.*

*The constraints of the site as outlined throughout the Statement of Environmental Effects have meant that proposal seeks additional variations to some of Council's development standards, specifically side and rear setbacks and landscaping. These have been sufficiently justified with the Statement of Environmental Effects. It is considered that notwithstanding the minor breaches to development standards that the proposed development has been designed to ensure that the bulk and scale of the dwelling is appropriate to for the site while also allowing for the alterations and additions of a dwelling that adequately meets the needs of future occupants.*

*It is important to note the recent Court Case approved for the development to the west of the subject site been No 4 Rolfe Street which was approved with a variation to the FSR controls.*

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

*The proposed dwelling has been skillfully designed to take into consideration the constraints of the parcel of land, in particular the 6.05m site width and the existing provisions for the semi-detached dwelling.*

*It is considered that the proposed dwelling is of a similar bulk and scale and height to other dwellings (as recently approved) within the immediate vicinity and will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.*

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

*The proposal relates to alterations and additions to an existing semi-detached dwelling. The project architects have review recent approvals surrounding the site and have strategically designed the alterations and additions of the first floor to be lower the the pitch of the existing roof at the front of the site. Therefore the proposed works will not be seen from the streetscape of Rolfe Street when directly viewed from the front of the premises. Therefore the proposal has been designed to minimize any adverse environmental impacts to adjoining land and the public domain.*

**(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.**

*Not applicable to the proposed development.*

**How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

*The proposed variation is considered to meet the objectives of the Clause 4.6 in that strict compliance with the Floor Space Ratio development standard stipulated with the MLEP 2013 is unreasonable and unnecessary for the following reasons:*

- The subject site has an area of 184.4 square meters which is well under the prescribed minimum lot size as detailed with the Manly LEP 2013. Under the provisions of clause 4.1.3.1 of the Manly DCP, Council may consider a FSR variation up to a calculation based on a 250 square meter lot.*
- The extent of the variation sought is no greater than what is denoted as being achievable within Figure 30 – Extent of FSR Variation for undersized lots.*
- The breach in FSR has been detailed within supporting documentation for this proposal, is considered to cause minimal adverse impacts to the immediate and broader locality and is in keep with the bulk and scale and adjoining properties.*
- As demonstrated within the architectural package the proposed dwelling is of a similar bulk and scale to other dwellings within the immediate vicinity and is not considered to have a detrimental impact on the visual amenity of Rolfe Street*
- In particular reference is made to the recent Court Case (Sketch Design Studio (t/as SketchArc) v Manly Council [2015] NSWLEC 1202 - Decision date: 04 June 2015) approved for No. 4 Rolfe Street for alterations and additions to an existing semi-detached dwelling. Relevant components of the decision by Commissioner O'Neill are provided below:*

*46- In order for development consent to be granted for a development that contravenes a development standard in LEP 2013, I must be satisfied that the proposal is consistent with the objectives of the development standard and the objectives for development within the zone (cl 4.6(4)(a)(ii) of LEP 2013) and that the applicant's written request has adequately addressed that compliance with the development standard is unreasonable or unnecessary in the circumstances (cl 4.6(3)(a) of LEP 2013) and that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) of LEP 2013).*

*47- The relevant objective for the FSR development standard, at sub-cl 4.4(1)(a), (c) and (d) of LEP 2013, is to ensure that the bulk and scale of development is appropriate to the condition of the site and its context. The parties agreed that the remaining objectives are not relevant.*

*48- The evidence of the planning experts that the maximum exceedance of the FSR Development Standard for the site of 0.6:1 is dictated by cl 4.1.3.1 of DCP 2013, which gives a maximum gross floor area for the site of 150sqm, is incorrect. The provisions of cl 4.6 of LEP 2013 are the sole power to allow a variation of the development standards and DCP 2013 cannot be used to constrain the numerical value of the variation, if it is determined that the provisions of cl 4.6 are met.*

49- I am satisfied that the bulk and scale of the proposal is consistent with the adjoining attached dwelling, notwithstanding that the proposal extends further to the rear boundary on the first floor when compared to the adjoining attached dwelling; and that the bulk and scale of the proposal is appropriate to the condition of the site and its context. For this reason, the written request seeking to justify the contravention of the FSR development standard of 0.6:1 adequately addresses the matters required to be demonstrated in cl 4.6(3)(a) and (b) and strict compliance with the FSR development standard is unnecessary in the circumstances.

**Does the non-compliance with the development standard raise any matter of significance for State or Regional environmental planning?**

No matter of significance for state or regional environmental planning would be raised as a consequence of the non-compliance.

**How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?**

The objects set down in Section 5(a)(i) and (ii) are as follows:

“to encourage

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.
- (ii) The promotion and coordination of the orderly and economic use and development of land...”

The prevailing constraints of the site have hindered the ability of the site to fully comply with Council's numeric standards. As has been detailed with the Statement of Environmental Effects and within this Clause 4.6 Statement a strictly complying development would hinder the ability of the proposal to provide a dwelling that can fully meet the needs and requirements of the growing family that will occupy the site.

Notwithstanding the above, Manly Council's own DCP recognises and gives reference to site's such as our clients site and provides provisions to the extent that variations may be applied for which have been utilised throughout this development proposal.

As has been demonstrated throughout the supporting documentation for this development, there will be minimal adverse impacts to the immediate and broader locality as a result of the proposal. In this regard, compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, being orderly and economic use and development of the site.”

- (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 matters required to be demonstrated by subclause (3).

- (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 R1 General Residential zone in the MLEP 2013.

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

Comment: Planning Circular PS 08-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. However, the development contravenes the development standard by greater than 10% and as such concurrence may not be assumed by a delegate of Council but in this case a local planning panel.

**Part 5 Miscellaneous Provisions**

Not applicable.

**Part 6 Local Provisions**

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comment
6.1	Acid Sulphate Soils	Yes	Yes	Proposal complies with this clause.
6.3	Flood Planning	Yes	Yes	Proposal complies with this clause, subject to conditions of consent.
6.4	Stormwater Management	Yes	Yes	Proposal complies with this clause, subject to conditions.

**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	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓ (see comments)	
Privacy and Security	✓ (see comments)	
Maintenance of Views	✓	

**Comment:**

**3.1 Streetscapes and Townscapes**

The proposal is consistent with the relevant objectives relating to Streetscape in section 3.1 of the Manly DCP. The relevant objectives in the Manly DCP that relate to Streetscape are as follows:

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

The extension of the 1.9m high front fence as viewed from the street will not have any unreasonable impact upon the street frontage. The proposed fence is in keeping with the existing streetscape. There is no change to the height of the fence. Similar wall style fences on the front boundary are seen at Nos. 4, 5, 6, 7 and 8 Rolfe Street which are located on the northern side of Rolfe Street are of similar style (See photo 1).



*Photo 1- Neighbouring Rolfe Street Properties*

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

The proposed first floor addition maintains the existing front setback. The pattern of front setbacks along the northern side of Rolfe Street is varied, with no established building line. Given that the first floor does not increase the envelope, the siting is not considered unreasonable.

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

The proposed front fence is reasonable in this residential setting.

#### 3.4.1 Sunlight Access and Overshadowing

The proposal is consistent with the relevant objectives relating to Sunlight Access and Overshadowing in section 3.4 of the Manly DCP. The relevant objectives in the Manly DCP that relate to Sunlight Access and Overshadowing are as follows:

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

The proposed works allows of equitable access to light and sunshine to the subject site and adjoining dwellings.

*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 subject site has a north-south orientation. Given this and works proposed the only resulting additional overshadowing is at 12pm with negligible increase in shadowing to the front of the subject site. There is no other increase in shadowing to adjoining properties living rooms or private open space between the hours of 9am and 3pm during the winter solstice, compliant with the numeric control.

*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 first floor is setback from the ground floor on the southern side of the development, which assists in further reducing overshadowing impacts to adjoining properties.

### 3.4.2 Privacy and Security

The proposal is consistent with the relevant objectives relating to Privacy and Security in section 3.4 of the Manly DCP, subject to conditions. The relevant objectives in the Manly DCP that relate to Privacy and Security are as follows:

*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 new windows (labelled as W06 and W07) on the western side of the proposed first floor are highlight windows with a sill height of 1.8 above finished floor level to reduce the potential for any direct overlooking to the adjoining western property (No. 4 Rolfe Street).

*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 screen wall located at the end of proposed bedroom will allow for privacy to be maintained to and from the adjoining western property (No. 4 Rolfe Street), while allowing for northern light to penetrate the first floor bedroom.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposal retains an open frontage to allow for passive Surveillance.

### **Part 4 - Development Controls**

Site Area:	184.4m <sup>2</sup>	<b>Permitted/ Required</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Wall height West side	6.5m	6.5m	5.9m	Yes
Number of Storeys	2	2	2	Yes
Roof height	2.5m	2.5m	0.5m	Yes
Setback Front	6.0m or streetscape	6.0m or streetscape	3m, consistent with streetscape.	Yes
West setback side	1.96m	1.96m	0.9-1.5m	No
Setback Rear	8.0m	8.0m	4.77m (Deck) 5.7(Ground Floor) 8.29 (First Floor)	No
Setback to RE1, RE2, E1 and E2	6.0 / 8.0m	6.0 / 8.0m	0.5m	Yes
Open space - total	Min. 55% of Site Area (101.4m <sup>2</sup> )	Min. 55% of Site Area (101.4m <sup>2</sup> )	32.5% (60m <sup>2</sup> )	No
Open space - landscaped	Min. 35% of Total Open Space (21m <sup>2</sup> )	Min. 35% of Total Open Space (21m <sup>2</sup> )	36% (22m <sup>2</sup> )	Yes
Number of Endemic Trees	1	1	0	Yes, subject to conditions of consent.
Private Open Space	18m <sup>2</sup>	18m <sup>2</sup>	34m <sup>2</sup>	Yes

Site Area:	184.4m <sup>2</sup>	Permitted/ Required	Proposed	Complies Yes/No
Fence height		1m solid / 1.5 with transparency	1.9m	No, see comments related to streetscape.

**Comment:**

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

The proposal is non-compliant with the control for rear and side setbacks. An assessment of the proposal against the objectives for setbacks is as follows:

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

The proposed works will not have an unreasonable impact on the streetscape. The dwelling is consistent with the prevailing spatial proportions of the street. The adjoining properties to the north and south (Nos. 2, 4, 5 and 6 Rolfe Street) maintain a similar bulk and scale and front, side and rear setbacks consistent with the proposed works.

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

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

The proposed works will retain privacy to adjoining properties. There is no unreasonable overshadowing impact that will result from the proposed works. No view to or from public spaces will be compromised by the proposed development.

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

Flexibility is given in this situation, as there is no unreasonable amenity impacts that will result from the proposed development.

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

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

The proposal is compliant with the numerical control relating to landscaped open space. The proposal complies with the clause, subject to conditions.

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

The subject site is not located in a bushfire asset protection zone.

Given the above it is considered that the relevant setback and building separation objectives outlined in Clause 4.1.4 have been achieved, and is therefore considered acceptable on merit.

#### 4.1.5 Open Space and Landscaping

The proposal is non-compliant with the control for Total and landscaped open space. An assessment of the proposal against the objectives for setbacks is as follows:

*Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

There is no reduction of any important existing landscape features on site.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

The proposal maintains compliance with the Landscape Open Space provision under the Manly DCP.

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

The proposed works will retain privacy to adjoining properties, subject to conditions. There is no unreasonable overshadowing impact that will result from the proposed works (see comments under Part 3 General Principles of Development).

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

The proposal retains reasonable levels of landscaped open space at ground level to the front and rear of the dwelling to minimise the stormwater runoff that may result from the proposed development.

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

The proposed private open space is compliant with the numerical requirements under the Manly DCP. The proposed works will not lead to an increased spread of weeds.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

The subject site is not in the vicinity of any important wildlife corridors.

#### 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:

##### Flood Control Lots

The proposal is deemed to be consistent with the Northern Beaches Council Policy – Flood Prone Land, subject to conditions.

**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 proposed development has been assessed having regard to the Manly Local Environment Plan 2013 and the Manly Development Control Plan and is considered to be satisfactory.

**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 as modified by the conditions of consent is not considered to have any detrimental impacts on the natural and built environments and is accordingly recommended for approval.

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

The proposed development as modified by the conditions of consent is considered to be 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 no submissions received.

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

The public interest is best served by the consistent application of the relevant environmental planning instruments and by the consent authority ensuring that any adverse impacts on the surrounding area are avoided. This is considered to have been achieved in this instance subject to the recommended conditions of consent.

**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 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 4.4 (Floor Space Ratio) 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. 273/2017 for alterations and additions to the existing semi-detached dwelling house at 3 Rolfe Street, 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. 273/2017:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
Da-02/ Existing+ Demo+ Management+ Sediment /Erosion Control Plan	Revision B/ 24 April 2018	Mackenziepronk architects
DA-03/ Site Analysis Plan	Revision B/ 24 April 2018	Mackenziepronk architects
DA-04/ Site+ Roof Plan	Revision B/ 24 April 2018	Mackenziepronk architects
DA-05/ Proposed Ground and First Floor Plan	Revision B/ 24 April 2018	Mackenziepronk architects
DA-06/ Proposed Elevations	Revision B/ 24 April 2018	Mackenziepronk architects
DA-07/ Proposed Elevations	Revision B/ 24 April 2018	Mackenziepronk architects
DA-08/Proposed Sections	Revision B/ 24 April 2018	Mackenziepronk architects
DA-10/ Landscape + Area Plans	Revision B/ 24 April 2018	Mackenziepronk architects

*Reference Documentation relating to Development Consent No. 273/2017:*

- BASIX Certificate number: A290560 dated 21 August 2017.

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**

Stormwater shall be disposed of to an existing approved system or in accordance with Council's Manly Specification for on-site Stormwater Management. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

**ANS03**

The development shall be designed and constructed so that there is no net loss of flood storage below the 1% Annual Exceedance Probability flood level of 3.16m AHD.

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 3.66m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

The underfloor area of the extension to the dwelling is to be designed and constructed to allow clear passage of floodwaters. The underfloor perimeter of the dwelling is to have a minimum of 50% open area. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

**1 (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.

**2 (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.

### 3 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

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

### 4 (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 COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### 5 (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.

### 6 (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.

#### 7 (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.

#### 8 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

#### 9 (4LD08)

Retain and protect trees and planting on council's Road Reserve during construction including the existing White Calliandra located along the front boundary.

Reason: To maintain the number of street trees and preserve the amenity of the local area.

10 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

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

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

### **ANS05**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

## **ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

11 (6LP01)

No existing street trees can be removed without Council approval. Where such approval is granted, the trees must be replaced at full cost by the applicant with an advanced tree of a species nominated by Council's relevant officer.

Reason: To encourage the retention of street trees.

12 (6LP04)

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

13 (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.