

**Four Towns
Planning**

Planning and property consultant

STATEMENT OF MODIFICATION

**Section 4.55 (2) to
DA2025/0088 approved 11
April 2025 for alterations
and additions to a dwelling
house**

**2 New Street,
Balgowlah NSW 2093**

✉ mathew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

This report has been prepared to support a Section 4.55 (2) Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:

Mathew Quattroville

Director – Four Towns Pty Ltd

Report prepared for:

Matt DeGaris

9 October 2025

© Four Towns Pty Ltd

NOTE: This document is the property of Four Towns Pty Ltd (trading as Four Towns Planning). This document is Copyright, no part may be reproduced in whole or in part, without the written permission of Four Towns Pty Ltd.

Disclaimer

This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

Table of Contents

1. Introduction and Background Information	4
1.1 Introduction	4
1.2 Background Information	4
2. Site Profile	5
2.1 Property Description	5
2.2 Site and Locality Description	5
3. Proposal	7
4. Statutory Planning Controls	8
4.1 Environmental Planning and Assessment Act 1979 (as amended)	8
4.2 State Environmental Planning Policies	11
4.3 Manly Local Environmental Plan 2013	13
4.4 Manly Development Control Plan 2013	24
5. Matters for Consideration Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended)	47
6. Summary and Conclusion	51

1. Introduction and Background Information

1.1 Introduction

This report has been prepared as supporting documentation for a Section 4.55 (2) Modification application to DA2025/0088 at 2 New Street, Balgowlah, being Lot 12 in DP12383.

This report has been prepared following instructions from the clients, Matt DeGaris. In preparing this application consideration has been given to the following:

- *Environmental Planning and Assessment Act, 1979* (as amended) (EP&A Act);
- Environmental Planning and Assessment Regulation 2021;
- Relevant State Environmental Planning Policies;
- Manly Local Environmental Plan 2013 (MLEP 2013);
- Manly Development Control Plan (MDCP);
- Revised Architectural Plans prepared by Hargroves Design Consultants;
- Revised BASIX Certificate prepared by RP Studio.

This Statement of Modification describes the proposed development having particular regard to the provisions of Section 4.15 of the EP&A Act 1979 and examines any potential environmental impacts with regard to the relevant sections of the Act, State policies and requirements of Northern Beaches Council's MDCP.

The conclusions of the Statement of Modification are that the proposed development, being alterations and additions to a dwelling house is permissible with development consent and is consistent with the relevant statutory planning instruments including the Manly Local Environmental Plan 2013 and planning policies of the Manly Development Control Plan 2013.

Accordingly, the Development Application succeeds on its merits and should be approved by Council as submitted.

1.2 Background Information

The site was the subject of Development Application DA2025/0088 which was approved by Northern Beaches Council on 11 April 2025. This application proposes to modify the approved plans with functional changes to suit the owner's requirements from discussions with the builder and internal designer. No pre-lodgement meetings have been held regarding the proposed modifications.

A construction certificate was granted 21 July 2025, with notice to commence completed and works underway in relation to DA2025/0088.

2. Site Profile

2.1 Property Description

The subject allotment is described as 2 New Street, Balgowlah, legally known as Lot 12 within Deposited Plan 12383. The site is zoned R2 Low Density Residential under the Manly Local Environmental Plan 2013.

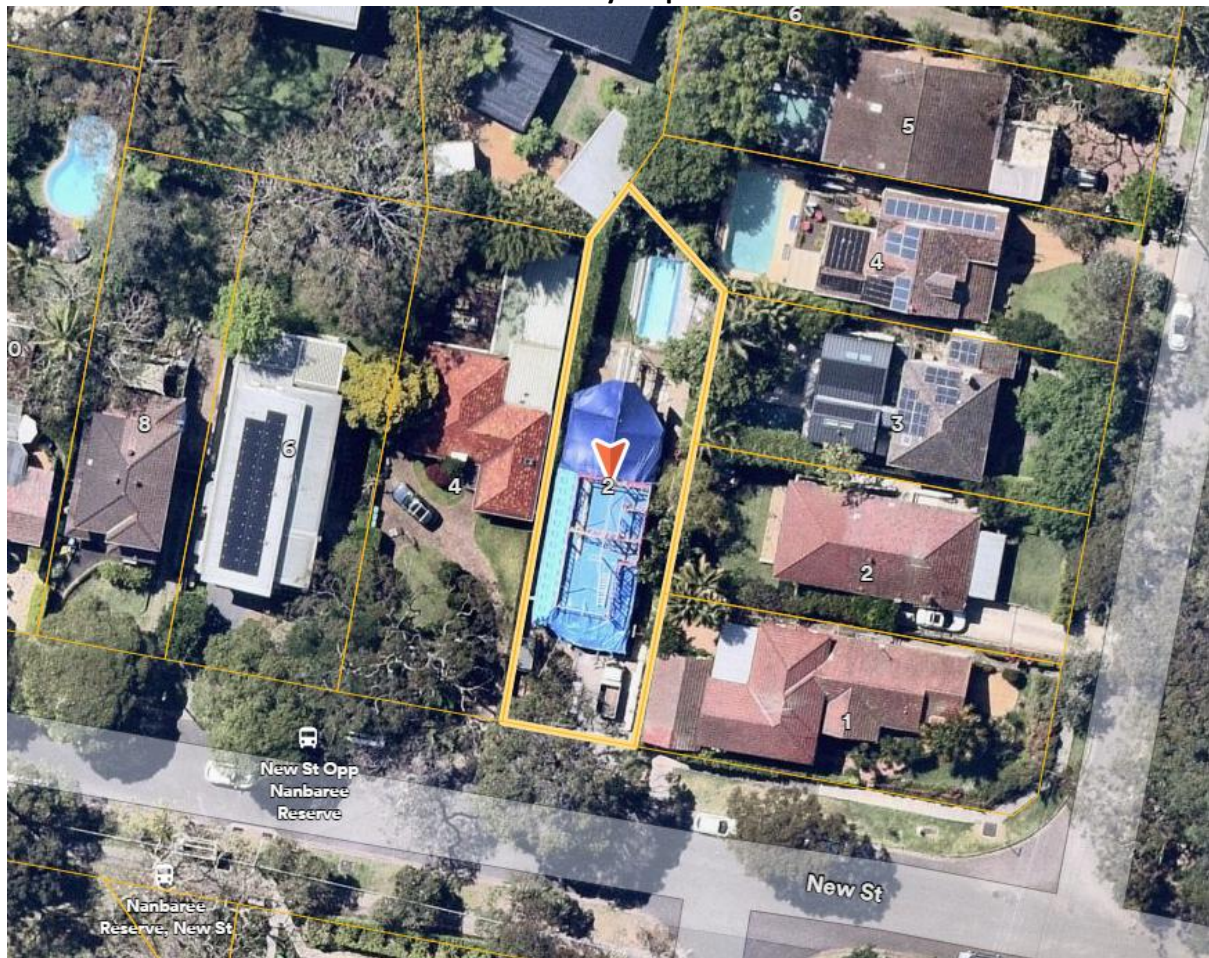
The site is not listed as a heritage item, nor is it located within a conservation area.

2.2 Site and Locality Description

The site is located on the northern side of New Street to the west of the intersection with Hogan Street and the east of the intersection with Condamine Street. The site is irregular in shape with a frontage to New Street of 12.19m. The total site area is 550.1m². The site has varying topography sloping from the street to the rear by approximately 2m. The site is currently under construction.

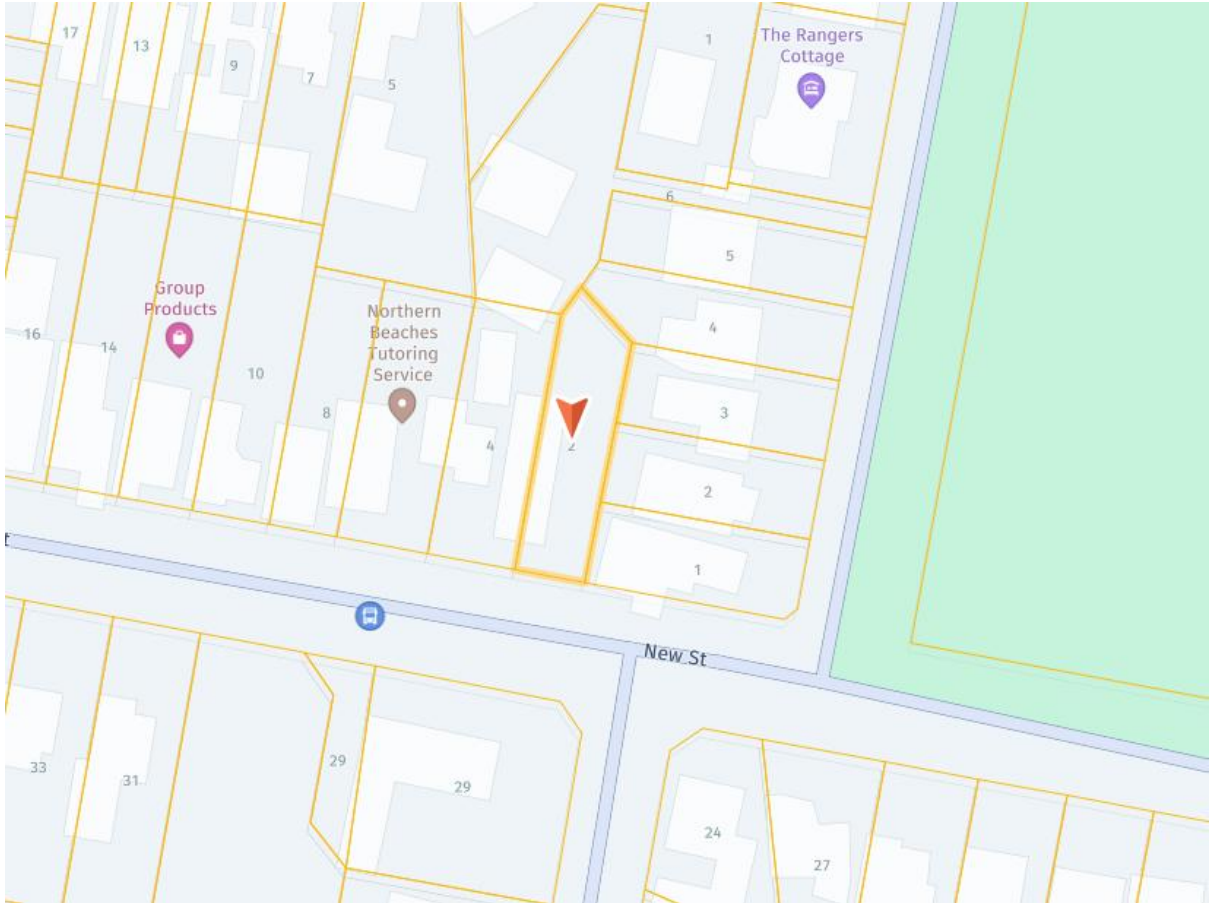
The locality maps below show the location and area of the site:

Locality Maps



Source: Nearmaps 2025

Section 4.55 (2) Modification



Source: Nearmaps 2025

3. Proposal

The proposed Section 4.55 (2) Modification is in relation to Development Application DA2025/0088 approved for alterations and additions to a dwelling house.

The proposed modifications include:

Drawing GA-102 – Demolition Ground Floor Plan

- Additional demolition works are per red clouds

Drawing GA-103 – Proposed Ground Floor Plan

- Window enlarged to kitchen
- Laundry enlarged
- Bed 3 WIR deleted and changed to robe
- Amendment to windows in J&J bathroom

Drawing GA-104 – Proposed New First Floor Plan

- Southern balcony reduced in size with GFA added to retreat
- W20 amended

Drawing GA-106 – Proposed Roof Plan

- Carport roof pitch direction changed
- Skylights amended as per red clouded areas

**Refer to architectural plans prepared by Hargroves Design Consultants for a full description of all works.*

4. Statutory Planning Controls

The proposal has been assessed in accordance with the following instruments and controls:

- *Environmental Planning and Assessment Act 1979*, and *Environmental Planning and Assessment Regulation 2021*;
- State Environmental Planning Policies;
- Manly Local Environmental Plan 2013; and
- Manly Development Control Plan 2013.

4.1 *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) and *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation 2021)

The EP&A Act 1979 governs all environmental planning instruments within New South Wales. The proposal has been reviewed pursuant to the matters for consideration within Section 4.15 of the EP&A Act 1979.

The proposal is not Designated Development under Section 4.10 of the EP&A Act 1979 or Schedule 3 of the EPA Assessment Regulation 2021, therefore Northern Beaches Council is the Consent Authority. In addition, the proposal does not constitute an Integrated Development under the EP&A Act 1979, Section 4.46 with no further approvals from other Government agencies required.

Statutory Provisions for Section 4.55 (2) Modification

It is submitted that the proposed modification falls within the definition of a Section 4.55 Modification of Consents – generally, Clause (2), being:

*(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with—
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of

relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(5) (Repealed)

Source: EP&A Act 1979, Section 4.55

The NSW Land and Environment Court has established several precedents as to what may be considered as being substantially the same development, and what should be factored into the consideration of this threshold test. The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of *Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358*, whereupon Commissioner Mason P. found in relation to modification of development consents that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

The development, as modified, is substantially the same development and will not result in a radical transformation of DA2025/0088 for the following reasons:

- The modification remains the approved primary land use as a ‘dwelling house’.
- There are no substantial quantitative changes proposed to the approved building bulk or scale. The proposed modification to the design and layout retains the existing building height and footprint. Irrespective of the modification to additional GFA within the existing approved balcony, the proposal maintains the overall building form and scale that is commensurate with that of the original approval.
- The proposed design modifications are not anticipated to result in any adverse visual or amenity impacts on the subject site and the surrounding properties; and
- The function, form, operations and importantly, public perception of the subject site, as a ‘dwelling house’, remains largely unchanged, with the reconfigurations retaining the original intent of the development as approved and viewed from a public place.

In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of the consent, as currently approved, satisfying the radical transformation test pursuant to *Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358*.

Whilst the proposal seeks to modify the design of the approved development, the modifications are not considered to be material or essential elements of the approved development which would constitute a radical change to the ultimate development outcome of the subject site. This is further analysed in *Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280* which applies a quantitative and qualitative test to determine what qualifies a development as being “substantially the same”.

Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280 provides that a comparison of the development as approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development. The comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted). Whilst it is acknowledged that the proposal does include some quantitative changes to the approved development, these are not

considered to be substantial or comprise a critical element of the development. Further, from a qualitative perspective, the development retains its identity as a 'dwelling house'.

Qualitatively, the proposed building will present a bulk and scale not inconsistent with the approved application. Placing aside merit considerations, which are addressed throughout this submission, it is my opinion that the proposal is substantially the same development as that which was originally approved. The development will continue to constitute a 'dwelling house'. While the dwelling design will in part be externally reconfigured, the general siting, scale, orientation, and location of private open spaces are not varied as part of this modification. Accordingly, the works will not change the approved design 'essentially or materially'.

It is therefore submitted that the following outcomes are relevant to this proposed modification:

- This application for modification of a development consent does not significantly alter the external appearance or built form of the subject premises to any degree that it would represent a building of a different urban design to the approved development.
- The built form outcome is relatively the same in terms of overall bulk, scale and appearance of the development that has been previously approved.
- The amenity and streetscape outcomes of the original development consent are retained with no adverse impacts from the amendments in terms of amenity for privacy or visual impacts.
- The development does not give rise to any adverse impacts associated with views from the adjoining development which has already been the subject of detailed analysis as part of the original DA as approved by Council.
- The use of the land will remain for the purpose of a residential dwelling as approved by Council on 11 April 2025 under DA2025/0088.

Noting the assessment undertaken above, it is also important to acknowledge the recent court cases under:

[Realize Architecture Pty Ltd v Canterbury-Bankstown Council \[2023\] NSWLEC 1437](#) ('**Realize Architecture (1)**') dated 9 August 2023

[Canterbury-Bankstown Council v Realize Architecture Pty Ltd \[2024\] NSWLEC 31](#) ('**Realize Architecture (2)**'), dated 4 April 2024

Mills Oakley provide a succinct analysis noting the requirements of Moto Projects (No 2) Pty Ltd and the assessment under Realize Architecture Pty Ltd:

- *Comparing the **quantitative differences** between the proposed modified development against the original approved development*
- *Comparing the **qualitative differences** between the proposed modified development against the original approved development*
- *Comparing the **critical elements** of the proposed modified development against the original approved development*
- *Most importantly, by then **balancing** the evidence in respect of all of those factual comparisons before forming a subjective opinion as to whether the proposed modified development was 'substantially the same' as the original approved development*

*The Court's decisions in Realize Architecture (1) and (2) are a refreshing reminder for local Councils that it is important **not to get bogged down in the 'quantitative' (numerical) differences as they appear in isolation** and that **it is entirely acceptable for there to be large numeric differences***

approved through the modification pathways that exist in s.4.55/4.56 of the EPA Act upon taking a more holistic and balanced approach to the test.

On the basis of the above, noting that there is substantial evidence that the proposal is substantially the same, the proposal meets the requirements of relevant court cases and Council must take a balanced approach as applied and upheld through the Court's decisions in *Realize Architecture (1) and (2)*.

Based on the above, it is my assessment that Council acknowledges the parameters for a Section 4.55 (2) application and on this basis, the modification the subject of this application does not alter the merit-based assessment that generated the original approval by Northern Beaches Council. The approval, if modified, will retain the essence of the original consent and is therefore considered to fall within the relevant tests for Section 4.55 of The Act. The application meets the requirements of a Section 4.55 (2) Modification, and therefore the consent authority can consider and grant consent to the application on the basis that the development will remain substantially the same as that originally approved by Northern Beaches Council.

4.2 State Environmental Planning Policies (SEPPs)

SEPP (Transport and Infrastructure) 2021

It is submitted that the proposal complies with the provisions of SEPP (Transport and Infrastructure) 2021 and therefore no further assessment is required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The aims of Chapter 2: Vegetation of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 ("SEPP (Biodiversity and Conservation) 2021") in non-rural areas is to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. Clause 2.3 prescribes that land to which this chapter applies includes the Northern Beaches Local Government Area and is applicable within R2: Low Density Residential zone as per MLEP2013.

The proposed modification does not change the merit-based assessment under DA2025/0088, therefore no further review is required.

State Environmental Planning Policy (Building and Sustainability Index 2004)

The proposal has been assessed in accordance with the relevant provisions of the BASIX and Energy Efficiency (SEPP Building Sustainability Index: BASIX) 2004. The proposal is supported by a revised BASIX Certificate which confirms compliance with the relevant requirements for Water and Energy.

State Environmental Planning Policy (Resilience and Hazards) 2021

The aims of Chapter 3: Hazardous and Offensive Development of the State Environmental Planning Policy (Resilience and Hazards) 2021 ("SEPP (Resilience and Hazards) 2021") is to ensure that in determining a development whether a development is hazardous or offensive industry, any means proposed to be employed to reduce the impact of the development are taken into account. In addition to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact.

Clause 4.6 of the SEPP (Resilience and Hazards) 2021 specifies the following:

- (1) A consent authority must not consent to the carrying out of any development on land unless—

 - (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is—

 - (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital—land—
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

The site is also not identified as being within an ‘investigation area’ in accordance with the Contaminated Land Management Act 1997. As a result of the review, the proposal meets the relevant requirements of State Environmental Planning Policy (Resilience and Hazards) 2021 and a detailed site investigation is not warranted for the site.

The proposal does not change the merit-based assessment under DA2025/0088, therefore no further review is required.

4.3 Manly Local Environmental Plan 2013 (MLEP2013)

The relevant matters to be considered under MLEP2013 are outlined below in the LEP summary compliance table.

Part 4: Principal Development Standards			
Standard	Permitted	Proposed	Comments
4.1 Minimum subdivision lot size	500sqm	N/A	No change to existing lot size 505.4m2
4.1AA Minimum subdivision lot size for community title scheme	N/A	N/A	N/A
4.1A Minimum lot sizes for manor houses and multi dwelling housing (terraces) in Zone R2	N/A	N/A	N/A
4.2 Rural subdivision	N/A	N/A	N/A
4.3 Height of buildings	8.5m	8.5m	Complies.
4.3A Special height provisions	N/A	N/A	N/A
4.4 Floor space ratio	0.45:1 247.545m2	DA Approved: 0.395:1 217.5sqm Proposed: 0.41:1 224.63sqm	Complies.
4.5 Calculation of floor space ratio and site area	Noted	Noted	Noted
4.6 Exceptions to development standards	Noted	N/A	N/A.

Part 5: Miscellaneous Provisions	
Provisions	Comments
5.1 Relevant acquisition authority	N/A
5.2 Classification and reclassification of public land	N/A
5.3 Development near zone boundaries	N/A
5.4 Controls relating to miscellaneous permissible uses	N/A
5.5 (Repealed)	N/A
5.6 Architectural roof features	N/A
5.7 Development below mean high water mark	N/A
5.8 Conversion of fire alarms	N/A
5.9, 5.9AA (Repealed)	N/A
5.10 Heritage conservation	N/A

5.11 Bush fire hazard reduction	N/A
5.12 Infrastructure development and use of existing buildings of the Crown	N/A
5.13 Eco-tourist facilities	N/A
5.14 Siding Spring Observatory – maintaining dark sky	N/A
5.15 Defence communications facility	N/A
5.16 Subdivision of, or dwellings on, land in certain rural, residential or environmental protection zones	N/A
5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations	N/A
5.18 Intensive livestock agriculture	N/A
5.19 Pond-based, tank-based and oyster aquaculture	N/A
5.20 Standards that cannot be used to refuse consent—playing and performing music	N/A
5.21 Flood planning	The site is identified as low to medium risk flood prone land. No change to recommendations approved under DA2025/0088.
5.22 Special flood considerations	N/A
5.23 Public bushland	N/A
5.24 Farm stay accommodation	N/A
5.25 Farm gate premises	N/A

Part 6: Relevant Additional Local Provisions	
Provisions	Comments
6.1 Acid sulfate soils	N/A – no change to merit assessment under DA2025/0088.
6.2 Earthworks	N/A – no change to merit assessment under DA2025/0088.
6.3 (Repealed)	N/A
6.4 Stormwater management	N/A – no change to merit assessment under DA2025/0088.
6.5 Terrestrial biodiversity	N/A
6.6 Riparian land and watercourses	N/A
6.7 Wetlands	N/A
6.8 Landslip risk	N/A
6.9 Foreshore scenic protection area	N/A – no change to merit assessment under DA2025/0088.
6.10 Limited development on foreshore area	N/A
6.11 Active street frontages	N/A
6.12 Essential services	Complies – the site has access to relevant essential services.
6.13 Design excellence	N/A
6.14 Requirement for development control plans	N/A

6.15 Tourist and visitor accommodation	N/A
6.16 Gross floor area in Zone B2	N/A
6.17 Health consulting rooms in Zones E3 and E4	N/A
6.18 (Repealed)	N/A
6.19 Development in St Patrick's Estate	N/A
6.20 Location of sex service premises	N/A
6.21 Noise impacts – licensed premises	N/A
6.22 Development for the purposes of secondary dwellings in certain residential and environmental protection zones	N/A

Relevant Schedules	
Schedule	Comments
Schedule 1 – Additional permitted uses	N/A
Schedule 2 – Exempt development	N/A
Schedule 3 – Complying development	N/A
Schedule 4 – Classification and reclassification of public land	N/A
Schedule 5 – Environmental heritage	N/A
Schedule 6 – Pond-based and tank-based aquaculture	N/A

Zoning Provisions



Land Zoning Map - Sheet LZN_001

Zone	
B1	Neighbourhood Centre
B2	Local Centre
B6	Enterprise Corridor
F1	National Parks and Nature Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
SP3	Tourist
W1	Natural Waterways

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Information and education facilities; Jetties; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Shop top housing; Signage; Tank-based aquaculture; Water recreation structures; Water recycling facilities; Water supply systems

4 Prohibited

Advertising structures; Water treatment facilities; Any other development not specified in item 2 or 3

Comment:

The site is zoned R2 Low Density Residential. A dwelling house is a permissible land use, therefore the proposed development is permissible with Council’s consent. The proposed modifications are consistent with the objectives of the zone, as supported below:

- The proposal retains the use of the site as a dwelling house which in turn provides for the housing needs of the community within a low-density residential environment.
- The proposal encourages the revitalisation and rehabilitation of the existing site which will be replaced by an exceptionally designed renovated dwelling providing more living space and residential capacity.

Part 4 Principal development standards

4.1 Minimum subdivision lot size



Lot Size Map - Sheet LSZ_001

Minimum Lot Size (sq m)	
C	250
D	300
I	500
M	600
R	750
T	950
U	1150

(1) *The objectives of this clause are as follows—*

- (a) *to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- (b) *to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- (c) *to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) *to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

(2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

(3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

(3A) *If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.*

(4) *This clause does not apply in relation to the subdivision of any land—*

- (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
- (b) *by any kind of subdivision under the Community Land Development Act 1989.*

Comment:

Not applicable - the site has a minimum lot size of 500sqm. Clause 4.1 is not applicable to this assessment.

4.3 Height of buildings



(1) *The objectives of this clause are as follows—*

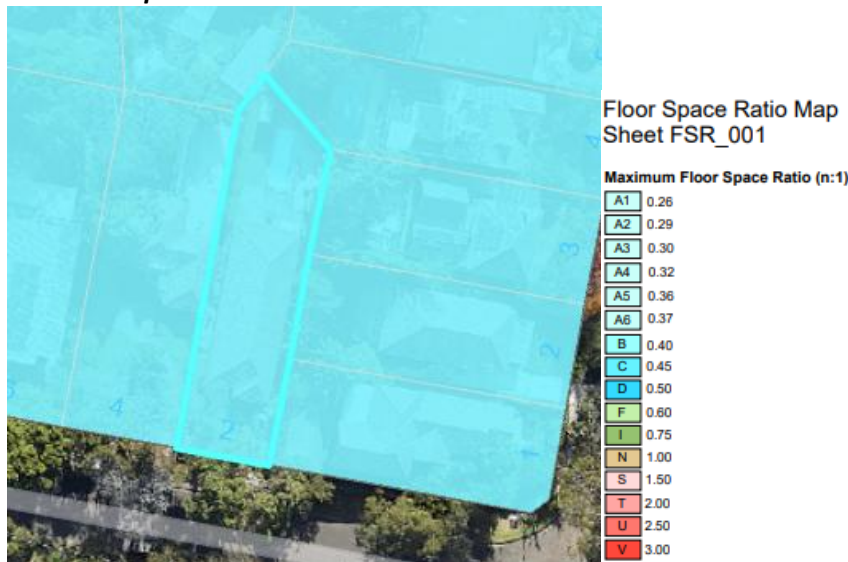
- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following—*
 - (i) *views 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.

Comment:

Complies – the proposed modification retains the approved building height of 8.5m as per DA2025/0088.

4.4 Floor space ratio



- (1) The objectives of this clause are as follows—
- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
 - (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,
 - (c) to 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,
 - (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.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
- (2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

Comment:

Complies – the proposed modification infills a portion of the first floor balcony within the existing building footprint with a proposed FSR of 0.41:1 (224.63sqm). The proposed 7.13sqm increase to that approved under DA2025/0088 is minor and complies with the 0.45:1 allowance for the site.

4.6 Exceptions to development standards

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

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

(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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note—

When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.15,*

(cb) a development standard on land to which clause 6.19 applies.

Comment:

Not applicable.

5.21 Flood planning

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

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.

(5) In this clause—

Considering Flooding in Land Use Planning Guideline means the Considering Flooding in Land Use Planning Guideline published on the Department's website on 14 July 2021.

flood planning area has the same meaning as it has in the Flood Risk Management Manual.

Flood Risk Management Manual means the Flood Risk Management Manual, ISBN 978-1-923076-17-4, published by the NSW Government in June 2023.

Comment:

Complies – the proposed modifications do not increase the building footprint, nor do they change the approved floor levels for the site. On this basis, no further review from a flood perspective is required and the merit-based assessment under DA2025/0088 stands.

Part 6 Additional local provisions

6.1 Acid sulfate soils

(1) *The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*

(2) *Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.*

<i>Class of land</i>	<i>Works</i>
1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

(3) *Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.*

(4) *Despite subclause (2), development consent is not required under this clause for the carrying out of works if—*

(a) *a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*

(b) *the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

(5) *Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power)—*

(a) *emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,*

(b) *routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),*

(c) *minor work, being work that costs less than \$20,000 (other than drainage work).*

(6) *Despite subclause (2), development consent is not required under this clause to carry out any works if—*

(a) *the works involve the disturbance of less than 1 tonne of soil, and*

(b) *the works are not likely to lower the watertable.*

Comment:

Not applicable – no change to merit assessment under DA2025/0088.

6.2 Earthworks

(1) *The objectives of this clause are as follows—*

(a) *to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental impact on environmental*

functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,

(b) to allow earthworks of a minor nature without requiring a separate development consent.

(2) Development consent is required for earthworks unless—

(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or

(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.

(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,

(b) the effect of the development on the likely future use or redevelopment of the land,

(c) the quality of the fill or the soil to be excavated, or both,

(d) the effect of the development on the existing and likely amenity of adjoining properties,

(e) the source of any fill material and the destination of any excavated material,

(f) the likelihood of disturbing relics,

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Note. *The National Parks and Wildlife Act 1974, particularly section 86, deals with harming Aboriginal objects.*

Comment:

Not applicable – no change to merit assessment under DA2025/0088.

6.4 Stormwater management

(1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

(2) This clause applies to all land in residential, business, industrial and environmental protection zones.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

Not applicable – no change to merit assessment under DA2025/0088.

6.9 Foreshore scenic protection area

(1) The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

(2) This clause applies to land that is shown as “Foreshore Scenic Protection Area” on the Foreshore Scenic Protection Area Map.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters—

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

Complies – the proposed amendments relate to functional and cosmetic changes which do not change the approved building footprint or height. On this basis, no change to merit assessment granted under DA2025/0088.

6.12 Essential services

(1) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

(a) the supply of water,

(b) the supply of electricity,

(c) the disposal and management of sewage,

(d) stormwater drainage or on-site conservation,

(e) suitable vehicular access.

(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any essential service referred to in this clause.

Comment:

The site currently has access to the listed essential services under Clause 6.12.

General

The site is not identified on the following maps:

- Heritage Map
- Land Reservation Acquisition Map
- Terrestrial Biodiversity Map, Wetlands Map, Watercourse Map
- Active Street Frontages Map
- Foreshore Building Line Map
- Key Sites Map

4.4 Manly Development Control Plan (MDCP)

In designing the proposed changes to the built form, due consideration has been given to the respective sections and objectives of MDCP2013, in particular:

- Part 3: General Principles of Development
- Part 4: Development Controls and Development Types

Key components of the DCP have been detailed below. The proposal is compliant with relevant provisions of the MDCP2013.

Part 3: General Principles of Development

3.1 Streetscapes and Townscapes

3.1 Streetscapes and Townscapes

Relevant DCP objectives to be met include the following:

Streetscape

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

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

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

Townscape

Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Objective 5) To assist in maintaining the character of the locality.

Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.

Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.

Comment:

Complies - the site is located within an established residential precinct and involves alterations and additions to a dwelling house. The existing streetscape consists of a mixture of one to three storey scaled buildings all of which vary in terms of building configuration, front, rear and side setbacks and building heights. The proposal implements a contemporary approach to the area and will positively contribute to the quality of the existing streetscape. The proposed amendments retain the merit-based assessment which granted consent under DA2025/0088.

3.1.1 Streetscape (Residential areas)

Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:

- i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
- v) *address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
- vi) *visually improve existing streetscapes through innovative design solutions; and*
- vii) *incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.*

Setback Principles in Higher Density Areas

- c) *In higher density areas (including LEP Zones R1 & R3), careful consideration should be given to minimising any loss of sunlight, privacy and views of neighbours. This is especially relevant in the design of new residential flat buildings adjacent to smaller developments. See also paragraph 3.4 Amenity.*

Comment:

The proposal implements a contemporary approach to the design of the building having regard to the compatibility with the precinct in terms of bulk and scale and will have no adverse impacts to the visual quality of the area.

3.1.1.2 Front Fences and Gates

See also paragraph 3.2.3 Fencing for Heritage Items and Conservation Areas.

See also paragraph 4.1.10 Fencing for height controls.

- a) *Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) *Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) *Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*
- d) *Gates must not encroach on public land when opening or closing.*

Comment:

Complies – no changed to approved front fence and gate under DA2025/0088.

3.1.1.3 Roofs and Dormer Windows

- a) *Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) *Roofs should be designed to avoid or minimise view loss and reflectivity.*
- c) *Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.*

Comment:

Complies – the proposed amendments make slight changes to approved roof with a pitch direction amendment to the carport and skylight changes to the main roof.

3.1.1.4 Garages, Carports and Hardstand Areas

- a) *Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:*
 - i) *its roof form, material choice and detailing by being subservient to the associated dwelling; and*
 - ii) *being compatible with the streetscape and the location in relation to front setback criteria.*
- b) *Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.*

Comment:

Not applicable – no change to merit assessment under DA2025/0088.

3.2 Heritage

Comment:

Not applicable.

3.3 Landscaping

3.3.1 Landscape Design

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.
Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

3.3.2 Preservation of Trees or Bushland Vegetation

Objective 1) To protect and enhance the urban forest of the Northern Beaches.
Objective 2) To effectively manage the risks that come with an established urban forest through professional management of trees.
Objective 3) To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.
Objective 4) To protect and enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.

Objective 5) To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long term.

Objective 6) To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.

Comment:

Not applicable – no change to merit assessment under DA2025/0088.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Designing for Amenity

a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.

b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.

c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.

Comment:

The proposal has been skilfully designed and assessed to ensure that all relevant measures have been undertaken to provide a quality residential product as per the client's requirements, while also protecting the amenity of existing and future residents. The project designer has skilfully created the dream home for the owners, while varying setbacks and building heights to retain the amenity of the adjoining neighbours and the future occupants of the dwelling. It is considered that there will be minimal to no impacts (to that approved under DA2025/0088) to the existing amenity of the neighbouring properties.

3.4.1 Sunlight Access and Overshadowing

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

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.*

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.*

Comment:

Not applicable – no change building height and footprint approved under DA2025/0088.

3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or

b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.

Comment:

Not applicable – no change building height and footprint approved under DA2025/0088.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);

b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);

c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

Comment:

Not applicable – no change building height and footprint approved under DA2025/0088.

3.4.2 Privacy and Security

Note: Consideration of privacy are typically balanced with other considerations such as views and solar access. The degree of privacy impact is influenced by factors including the use of the spaces where overlooking occurs, the times and frequency these spaces are being used, expectations of occupants for privacy and their ability to control overlooking with screening devices.

Relevant DCP objectives to satisfy in relation to this part include the following:

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;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

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

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Complies - the proposed modifications retain privacy measures for the occupants and adjoining properties.

3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

Comment:

Complies – the proposed amendments include minor changes to the ground and first floor windows as highlighted on the plans. The proposed amendments maintain privacy where necessary.

3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

Comment:

Complies – the proposed amendments reduce the first-floor southern balcony off the retreat room. The minor reduction is acceptable and still retains a functional balcony for the occupants of the dwelling. The terrace will not adversely overlook adjoining properties, as approved.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

- a) Consideration must be given to the protection of acoustical privacy in the design and management of development.*
- b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures. See particular requirements for noise control reports for licenced premises below at paragraph g) below.*

Comment:

Complies - Any noise generated from the proposed development will be associated with a 'dwelling house' and is an acceptable form of development within the R2: Low Density Residential Zoning of the site.

3.4.3 Maintenance of Views

Relevant DCP objectives to be satisfied in relation to this paragraph include the following:

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

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).

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.

- a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.*
- b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.*
- c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.*

Comment:

Not applicable – no change building height and footprint approved under DA2025/0088.

3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)

Relevant objectives in relation to this part include the following:

Objective 1) To ensure the principles of ecologically sustainable development are taken into consideration within a consistent and integrated planning framework that achieves environmental, economic and social sustainability in the short, medium and long term.

Objective 2) To encourage the retention and adaptation of existing dwellings including a preference for adaptive reuse of buildings rather than total demolition. Where retention and adaptation is not possible, Council encourages the use of building materials and techniques that are energy efficient, non-harmful and environmentally sustainable.

Objective 3) To minimise waste generated by development and embodied in the building materials and processes through demolition.

Objective 4) To encourage the use of recycled materials in landscape construction works.

Objective 5) To encourage the establishment of vegetable gardens and the planting of fruit trees.

Objective 6) To encourage energy efficient building design, construction and practices, that reduce energy consumption (primarily for heating and cooling), reduce the use of non-renewable fossil fuels, minimise air pollution, greenhouse gas emissions and reduce energy bills.

Objective 7) To require that residential site planning and building design optimise solar access to land and buildings.

Objective 8) To site and design development to optimise energy conservation and sustainability in accordance with BASIX legislation and encourage development to exceed requirement particularly to ensure energy efficient use of energy for internal heating and cooling.

See also Council's Administrative Guidelines

Objective 9) To site and design development to optimise energy conservation (in accordance with the energy hierarchy) and sustainability to which BASIX does not apply.

Objective 10) To ensure non-residential development involving a gross total floor area of greater than 500 sqm set and meet criteria for energy efficiency/conservation through an Energy Performance Report.

Objective 11) To ensure non-residential development complies with the Building Code of Australia energy efficiency provisions.

Comment:

The Section 4.55 (2) Application is supported by a revised BASIX Certificate which ensures the development will comply with the relevant BASIX commitments. The proposal will comply with the objectives and controls for Sustainability under the Manly Development Control Plan 2013.

3.6 Accessibility

Comment: Not applicable.

3.7 Stormwater Management

Relevant objectives to satisfy relation to this part include the following:

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

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

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

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

Comment:

Not applicable – no change to building footprint and stormwater approved under DA2025/0088.

3.8 Waste Management

Relevant objectives to satisfy in relation to this paragraph include the following:

Objective 1) To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).

Objective 2) Encourage environmentally protective waste management practices on construction and demolition sites which include:

- *sorting of waste into appropriate receptors (source separation, reuse and recycling) and ensure appropriate storage and collection of waste and to promote quality design of waste facilities;*
- *adoption of design standards that complement waste collection and management services offered by Council and private service providers;*
- *building designs and demolition and construction management techniques which maximises avoidance, reuse and recycling of building materials and which will minimise disposal of waste to landfill; and*
- *appropriately designed waste and recycling receptors are located so as to avoid impact upon surrounding and adjoining neighbours and enclosed in a screened off area.*

Objective 3) Encourage the ongoing minimisation and management of waste handling in the future use of premises.

Objective 4) To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.

Objective 5) To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.

Objective 6) To minimise any adverse environmental impacts associated with the storage and collection of waste.

Objective 7) To discourage illegal dumping.

Comment:

Not applicable – no change to approval granted under DA2025/0088.

3.9 Mechanical Plant Equipment

Comment:

Not applicable.

3.10 Safety and Security

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To ensure all development are safe and secure for all residents, occupants and visitors of various ages and abilities.

Objective 2) To ensure that the design process for all development integrate principles of ‘Safety in Design’ to eliminate or minimise risk to safety and security.

Objective 3) To contribute to the safety and security of the public domain.

Comment:

Complies – the proposed modifications do not change the merit-based assessment under DA2025/0088.

Part 4: Development Controls and Development Types

4.1 Residential Development Controls

Relevant DCP objectives to be met in relation to residential development include the following:

Objective 1) To delineate by means of development control the nature and intended future of the residential areas of the former Manly Council area.

Objective 2) To provide for a variety of housing types and densities while maintaining the exiting character of residential areas of the former Manly Council area.

Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of the former Manly Council area.

Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.

Objective 5) To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.

Objective 6) To enable other land uses that are compatible with the character and amenity of the locality.

Objective 7) To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increased demand.

Comment:

Complies – the proposed modifications maintain the merit-based assessment granted under DA2025/0088 with building height, footprint and envelope retained.

4.1.1 Dwelling Density, Dwelling Size and Subdivision

Relevant DCP objectives to be satisfied in relation to this part include:

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

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

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

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

Objective 5) To maximise the use of existing infrastructure.

Comment:

Not applicable.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

a) LEP Zones where numeric height controls in this DCP apply

Height controls under paragraph 4.1.2 of this plan apply to development in LEP Zones R1, R2, R3, E3 and E4. This part of the DCP does not apply to development of other lands subject to the LEP Height of Building standard identified on the LEP Height of Building Map.

See also paragraph 4.2 of this plan in relation to height controls and considerations in the LEP Business Zones.

b) Exceptions to Height

Where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must not increase the overall height of the existing building.

See also paragraph 4.1.7.2 Habitable Rooms in the Roof Structure.

Comment:

Refer to Clause 4.3 under Manly Local Environmental Plan 2013 for further details.

4.1.2.1 Wall Height

a) Within the LEP Height of Buildings development standard, the maximum external wall height is calculated based on the slope of the land under the proposed wall. Figures 26, 27 and 28 provide guidelines for determining the maximum height of external walls based on the particular slope of the land along the length of these proposed walls. The maximum wall height control will also vary from one building, elevation or part elevation to another depending on the slope of land on which the wall is sited. Within the range of maximum wall heights at Figures 26 and 28, the permitted wall height increases as the slope of the land increases up to a gradient of 1 in 4, at which point the permitted maximum wall height is capped according to Figure 26.

Figure 26 - Wall Height in relation to the LEP Height of Buildings Map

Subzones on the LEP Height of Buildings (HoB) Map *	Maximum Wall Height on flat land (no gradient)
Area 'L' on HoB Map (11m)	9m
Area 'N1' on HoB Map (13m)	12m
All other areas on HoB map	6.5m

* **Note:** Council's Wall Height control applies to the subzones within LEP Zones R1, R2, R3, E3 and E4.

4.1.2.1 Wall Height



Comment:

Not applicable - no change to approved wall heights under DA2025/0088.

4.1.2.2 Number of Storeys

a) Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.

b) Buildings on land in areas 'L' and 'N1' on the LEP Height of Building Map Buildings must not exceed 3 storeys notwithstanding the wall and roof height controls in this plan.

c) Variation to the maximum number of storeys may be considered:

i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and

ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP

Comment:

Not applicable - no change to approved storeys under DA2025/0088.

4.1.2.3 Roof Height

a) Pitched roof structures must be no higher than 2.5m above the actual wall height *, calculated in accordance with Figure 29.

* Note: In this paragraph 'actual wall height' means the wall height that is either existing or proposed rather than the maximum achievable wall height control in this plan.

b) Roof parapets may extend up to 0.6m above the actual wall height where Council considers that a parapet is considered to be appropriate to the design of the development and satisfies the objectives of this DCP and the LEP. For example, a parapet roof should not result in the appearance of lift structures and the like that protrude above the roof.

Note: As the LEP definition 'Building Height' incorporates plant and lift overruns, these structures must be similarly contained and not protrude above the maximum roof height.

Comment:

Complies - the proposal includes a pitch direction change to the carport roof. The pitch of the main roof to remain as approved under DA2025/0088.

4.1.3 Floor Space Ratio (FSR)

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

Comment:

Refer to assessment under Clause 4.4 MLEP2013.

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

Relevant DCP objectives to be met in relation to this part include:

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.

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.*

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

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.*

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

Comment:

Not applicable – no change to approved setbacks under DA2025/0088.

4.1.4.1 Street Front setbacks

- a) Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.
- b) Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape.
- c) Where the streetscape character is predominantly single storey building at the street frontage, the street setback is to be increased for any proposed upper floor level. See also paragraph 4.1.7.1.
- d) Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.

Comment:

Not applicable – no change to approved setbacks under DA2025/0088.

4.1.4.2 Side setbacks and secondary street frontages

- a) Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

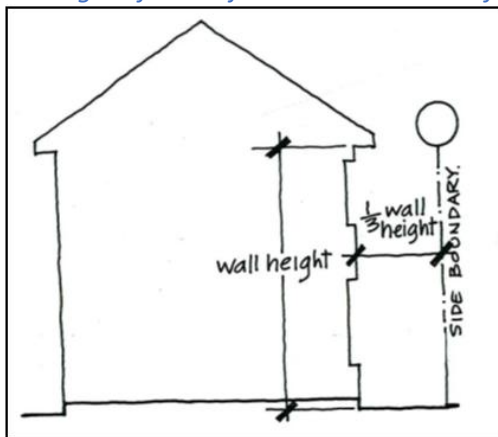


Figure 31 - Side Setback Diagram

- b) Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.
- c) All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries;
- d) For secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.
- e) Side setbacks must provide sufficient access to the side of properties to allow for property maintenance, planting of vegetation and sufficient separation from neighbouring properties. See also paragraph 4.1.4.3.b.vi. of this plan.
- f) In relation to the setback at the street corner of a corner allotment the setback must consider the need to facilitate any improved traffic conditions including adequate and safe levels of visibility at the street intersection. In this regard Council may consider the need for building works including front fence to be setback at this corner of the site to provide for an unobstructed splay. The maximum dimension of this triangular shaped splay would be typically up to 3m along the length of the site boundaries either side of the site corner.

4.1.4.3 Variations to Side Setback in Residential Density Areas D3 to D9 (see paragraph 4.1.1 of this plan)

Note: The following paragraphs apply to residential density areas D3 to D9 identified in Schedule 1 - Map A of this plan. In this regard the variations in this paragraph do not apply to density areas D1 and D2.

a) Council may consider an exception to the side setback control to enable windows at 90 degrees to the boundary to provide some flexibility in the siting and design of buildings which assist in satisfying setback objectives relating to privacy subject to the following:

i) The average distance to the boundary over the length of the wall is to be no less than the required setback control. In relation to the average distance to boundary, the area of building protruding into the minimum setback must be no greater than the area of land at the side boundary that is setback more than what is required by the minimum setback line.

ii) The wall protruding into the minimum setback must not provide windows facing the side boundary.

iii) The subject side elevation must provide a window(s) at some 90 degrees to the boundary.

b) Walls located within 0.9m of any one of the side boundaries may be considered but must:

*i) contain no windows; **

ii) be constructed to one side boundary only;

*iii) limit height to 3m; **

*iv) limit length to 35 percent of the adjoining site boundary; ***

v) submit a standard of finish and materials for external surfaces which complement the external architectural finishes of adjacent properties and/or the townscape character;

vi) obtain a right-of-way to provide access for maintenance; and

vii) satisfy the objectives for setback in this plan and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.

Comment:

Not applicable – no change to approved setbacks under DA2025/0088.

4.1.4.4 Rear Setbacks

a) The distance between any part of a building and the rear boundary must not be less than 8m.

b) Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. The character of existing natural vegetated settings is to be maintained. See also paragraph 3.3 Landscaping.

c) On sloping sites, particularly where new development is uphill and in sensitive foreshore locations, consideration must be given to the likely impacts of overshadowing, visual privacy and view loss.

d) Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.

Comment:

Not applicable – no change to approved setbacks under DA2025/0088.

4.1.5 Open Space and Landscaping

Relevant DCP objectives to be met in relation to these paragraphs include the following:

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

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.

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

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

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

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

Comment:

Complies – the proposed amendments retain compliant total open space and landscape areas. As per the assessment officers report for DA2025/0088, the approval had 58% (316.6sqm) of total open space. The proposal reduces the first-floor southern balcony by 7.13sqm with all other areas retained as approved. On this basis, the proposed amendments comply with proposed 56.26% (309.47sqm) of total open space for the site.

4.1.5.1 Minimum Residential Total Open Space Requirements

Numeric Controls

a) Open Space must be provided on site in accordance with Figure 34 - Numeric Requirements for Total Open Space, Landscaped Area and Open Space Above Ground.

<i>Residential Open Space Areas at DCP Schedule 1 – Map B</i>	<i><u>Total Open Space</u> (minimum percentage of site area)</i>	<i><u>Landscaped Area</u> (minimum percentage of <u>Total Open Space</u>)</i>	<i><u>Above Ground</u> (maximum of <u>Total Open Space</u>)</i>
<i>Area OS1</i>	<i>at least 45% of site area</i>	<i>at least 25% of open space</i>	<i>-In relation to dwelling houses: no more than 25% of <u>Total Open Space</u>.</i>
<i>Area OS2</i>	<i>at least 50% of site area</i>	<i>at least 30% of open space</i>	
<i>Area OS3</i>	<i>at least 55% of site area</i>	<i>at least 35% of open space</i>	<i>-In relation to all other land uses permitted in the Zone: no more than 40% of <u>Total Open Space</u>.</i>
<i>Area OS4</i>	<i>at least 60% of site area</i>	<i>at least 40% of open space</i>	

Minimum dimensions and areas for Total Open Space

b) Total Open Space (see Dictionary meanings including landscape area, open space above ground and principal private open space) must adhere to the following minimum specifications:

- i) horizontal dimension of at least 3m in any direction; and*
- ii) a minimum unbroken area of 12sqm.*
- iii) A variation to the minimum specifications in i) and ii) above may only be considered for Above Ground Open Space where it can be demonstrated that lesser dimensions or areas will better serve to minimise amenity impacts on neighbours. A lesser areas of above ground open space may be included or calculated under the minimum requirements in the circumstances of the case. In all other cases open space that does not comply with the minimum specification is not included or calculated under the minimum requirements for total open space.*

Provisions for Total Open Space Above Ground

Note: This paragraph limits the extent of total open space which may be provided above ground level.

c) Open Space Above Ground is limited on site in accordance with Figure 34 - Numeric Requirements for Total Open Space, Landscaped Area and Open Space above Ground Level. The maximum open space above ground requirement is determined as a percentage of the Total Open Space.

Amenity Considerations

i) Areas of total open space that are above ground are considered to have a potentially greater impact on the amenity of neighbours. Accordingly the provision of open space that is above ground is to be confined to a maximum percentage of the total open space for any development. In particular, roof terraces and large decks are discouraged and are not a preferred design option when providing open space above ground.

ii) All open space above ground including verandas, balconies, terraces, are not to be enclosed.

iii) The Total Open Space Above Ground as provided for in Figure 34 may be refused by Council where privacy and/or view loss are issues and where development does not satisfy particular considerations in the following paragraphs iv) and v).

iv) Roof terraces are not permitted unless designed for privacy with no direct lines of sight to adjoining private open spaces or habitable window openings both within the development site and within adjoining sites.

v) Council may also require methods of sound attenuation and/or acoustic treatment to be indicated in the DA to protect the acoustic amenity of neighbouring properties and the public. See paragraph 3.4.2.4 Acoustical Privacy (Noise Nuisance).

Comment:

Complies – the proposed amendments retain compliant total open space and landscape areas. As per the assessment officers report for DA2025/0088, the approval had 58% (316.6sqm) of total open space. The proposal reduces the first-floor southern balcony by 7.13sqm with all other areas retained as approved. On this basis, the proposed amendments comply with proposed 56.26% (309.47sqm) of total open space for the site.

4.1.5.2 Landscaped Area

Numeric Controls

a) Landscaped Area must be provided on site in accordance with above Figure 34 - Numeric Requirements for Total Open Space, Landscaped Area and Open Space above Ground Level. The minimum landscaped area requirement is a percentage of the actual total open space onsite.*

**Note: 'Actual' space refers here to proposed (or existing where no change proposed), rather than the minimum requirement for open space in this plan.*

Minimum Dimensions and Areas

b) Minimum dimensions and areas must provide for the following:

i) soil depth of at least 1m for all landscaped areas either in ground or above ground in raised planter beds; and

ii) a minimum horizontal dimension of 0.5m measured from the inner side of the planter bed/box, wall or any other structure which defines the landscaped area and incorporating an appropriate drainage and irrigation regime.

c) Minimum Tree Plantings

i) The minimum tree numbers must be in accordance with Figure 37 - Minimum Number of Native Trees Required.

ii) The minimum tree requirement may include either existing established native trees or new native trees planted at a pot/container size to be at least 25 litres capacity and being a species selected in accordance with Schedule 4 Part B - Native Tree Selection.

iii) The required minimum number of native trees required under this paragraph must be planted in a deep soil zone as defined in this plan's Dictionary.

*Figure 37 - Minimum Number of Native Trees Required
Note: to be read in conjunction with the LEP Lot Size Map.*

<i>Site Area (sqm)</i>	<i>Areas in the <u>LEP Lot Size Map</u></i>	<i>Minimum number of native trees listed in Schedule 4 Part B</i>
<i>up to 500</i>	<i>Area 'C' on the LEP Lot Size Map</i>	<i>1 <u>tree</u></i>
<i>up to 500</i>	<i>all Areas except Area 'C' on the LEP Lot Size Map</i>	<i>2 trees</i>
<i>between 500 and 800</i>	<i>all Areas on the LEP Lot Size Map</i>	<i>3 trees</i>
<i>over 800</i>	<i>Area 'C' on the LEP Lot Size Map</i>	<i>3 trees</i>
<i>over 800</i>	<i>all Areas except Area 'C' on the LEP Lot Size Map</i>	<i>4 trees</i>

Landscaping Driveways

d) Driveways alongside boundaries will be sufficiently setback to provide a landscaped area at least 0.5m wide between the driveway area and side boundary for the length of the driveway. Any parking hard stand area or carport associated with the driveway should also be similarly setback unless requiring a greater setback elsewhere under this plan.

Comment:

Not applicable – no change to approved landscape areas under DA2025/0088.

4.1.5.3 Private Open Space

Note: Private open space is in addition to the provision of communal open space for residential accommodation with more than 1 dwelling. Guidelines for the provisions of communal open space are contained in the Residential Flat Design Code referenced in this plan.

Principal Private Open Space

a) Principal private open space is to be provided in accordance with the following minimum specifications:

- i) Minimum area of principal private open space for a dwelling house is 18sqm; and*
- ii) Minimum area of principal private open space for residential accommodation with more than 1 dwelling on the site is 12sqm for each dwelling.*

Note: Principal private open space is both part of the private open space as defined in the LEP and the total open space requirement defined in the DCP and must also comply with the meanings and provisions for these spaces provided in the LEP and elsewhere in this DCP.

See also dictionary meaning of principal private open space in this DCP

Comment:

Not applicable – no change to approved private open space under DA2025/0088.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Relevant DCP objectives to be met in relation to these paragraphs include:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

Not applicable – no change to approved parking under DA2025/0088.

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas

See also paragraph 3.1.1 Streetscape.

- a) *The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.*

- b) *Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:*
 - i) *garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;*
 - ii) *carports must be open on both sides and at the front; and*

- c) *the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.*

Note: *The width of any parking structure considered under this paragraph is to be measured along the elevation of the structure that fronts the street.*

- d) *In relation to the provision of parking for dwelling houses, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.*

See Schedule 3 of this plan for parking and access requirements and paragraph 3.2.5.1 in relation to general exceptions to parking requirements for items of the environmental heritage listed at schedule 5 of the LEP.

Comment:

Not applicable – no change to approved parking under DA2025/0088.

4.1.6.3 Bicycle Storage

Secure bicycle storage is required for residential accommodation in accordance with Schedule 3 Part 2 Bicycles. Bicycle storage areas should be of sufficient dimensions to comply with Australian Standards.

Comment:

Not applicable – no change to merit assessment under DA2025/0088.

4.1.6.4 Vehicular Access

- a) *All vehicles should enter and leave the site in a forward direction.*
- b) *Vehicular access and parking for buildings with more than 1 dwelling is to be consolidated within one location, unless an alternative layout/design would better reflect the streetscape or the building form.*
- c) *Vision of vehicles entering and leaving the site must not be impaired by structures or landscaping.*
- d) *Particular attention should be given to separating pedestrian entries and vehicular crossings for safety.*
- e) *Vehicular access will not be permitted from pedestrianised areas in Manly Town Centre.*
- f) *In relation to the development of 15-17 Suwarrow Street and 28-34 Balgowlah Road Fairlight, should vehicular access for future development be through L M Graham Reserve, a right of way will be required at the eastern most part of the site, being a 1 metre right of way required for lots 29 and 30 in Sec 5, DP 939916. The right of way should nominate Council or any person nominated by Council as the beneficiary as well as Lot 1 in DP1022202, the other lots of the site, lots 29, 30, 31 and 32 in Section 5 of DP 939916, known as 15-17 Suwarrow Street Fairlight.*

Comment:

Not applicable – the proposed amendments retain the approved vehicular access point from New Street under DA2025/0088.

4.1.7 First Floor and Roof Additions

- a) *First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.*
- b) *The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.*

Comment:

Complies – the proposed amendments retain the existing building footprint with the character of the streetscape maintained.

4.1.8 Development on Sloping Sites

Relevant DCP objectives to be met in relation to these paragraphs include:

Objective 1) To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.

Objective 2) To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.
Objective 3) To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.

Comment:

Not applicable – no change to assessment under DA2025/0088.

4.1.9 Swimming Pools, Spas and Water Features

Relevant DCP objectives to be met in relation to these paragraphs include:

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;
Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;
Objective 3) To integrate landscaping; and
Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

Not applicable – no change to approved swimming pool under DA2025/0088.

4.1.9.1 Height above ground

- a) *Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:*
- i) *would not detract from the amenity or character of the neighbourhood; and*
 - ii) *is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

Comment:

Not applicable – no change to approved swimming pool under DA2025/0088.

4.1.9.2 Location and Setbacks

See also paragraph 4.1.4.5 Foreshore Building Lines and paragraph 4.1.4.6 Setback adjacent LEP Zones RE1, RE2, E1 and E2.

- a) *Swimming pools and spas must not be located within the front setback i.e. between the front boundary of the lot and the building line. Consideration of any exception to the required location must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:*
- i) *does not detract from the amenity or character of the neighbourhood; and*
 - ii) *is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

- c) *The setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1m, with the water line being at least 1.5m from the boundary.*

Comment:

Not applicable – no change to approved swimming pool under DA2025/0088.

4.1.9.3 Proportion of Total Open Space

Swimming pools and associated concourse areas must not comprise more than 30 percent of the total open space.

See also Dictionary meaning of Total Open Space which includes swimming pools only occupying less than 30 percent of the total open space.

Comment:

Not applicable – no change to approved swimming pool under DA2025/0088.

4.1.9.4 Other matters - sewer connections, pumps, structural certificates, rainwater tank and pool blankets

- a) *All swimming pools and spas must be connected to the sewerage system;*
- b) *Pumps and filters must be located, enclosed and acoustically controlled to limit noise to the appropriate standard. (See also paragraph 3.9.3 Noise from Mechanical Plant);*
- c) *A spa pool must not be located on a deck or balcony unless the structural integrity of the deck or balcony to accommodate the spa is certified by a structural engineer;*
- d) *A separate rain water tank, of adequate capacity, must be installed to recharge the pool when required; and*
- e) *Swimming pools should be covered with a secure “pool blanket”, or similar device, when not in use to minimise water loss by evaporation and to conserve energy in heated pools.*

Comment:

Not applicable – no change to approved swimming pool under DA2025/0088.

4.1.10 Fencing

See also paragraph 3.1 Streetscapes and Townscapes and paragraph 3.2.3 Fences for Heritage.

Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.

4.1.10.1 Exceptions to maximum height of Fences

- a) *In relation to stepped fences or walls on sloping sites (see paragraph 4.1.8), the fence and/or wall height control may be averaged.*
- b) *In relation to open/ transparent fences, height may be increased up to 1.5m where at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.*
- c) *In relation to development along busy roads:*

- i) *where a development will be subjected to significant street noise, Council may consider exceptions to the permitted fence height where the use of double glazing or thicker glazing for the residence is not available. The use of double glazing for windows in the development is the preferred means of noise reduction. See also paragraph 3.4.2.4 Acoustical Privacy.*
- ii) *fences to the southern side of French's Forest Road, Seaforth may achieve a maximum height of 1.5m with 'solid' fencing.*

Comment:

Not applicable – no change to any fencing approved under DA2025/0088.

Part 4.4 Other Development (all LEP Zones)

4.4.1 Demolition

Relevant DCP objectives in this plan in relation to these paragraphs include:

Objective 1)

To protect the environment during demolition, site works, and construction phases of development.

Where development involves demolition, the applicant is to demonstrate that the degree of demolition considers any existing building on the land that should be retained and appropriately adapted in order to:

- a) Meet ecologically sustainable development principles by conserving resources and energy and reducing waste from any demolition process; and*
- b) Conserve the cultural heritage of the existing building and that of the locality. An appropriate assessment of potential heritage significance must accompany any DA in relation to demolition. If the property has merit as a potential heritage item, the heritage controls and considerations in this plan apply, and*
- c) Comply with the requirements of the Northern Beaches Waste Management Policy*

Comment:

Complies – the proposed amendments include a couple of additional parts for demolition which are minor and do not change the merit assessment of the application under DA2025/0088.

4.4.5 Earthworks (Excavation and Filling)

Note: Before granting development consent for earthworks, consideration must be given to the matters listed in LEP clause 6.2(3)(a)-(h).

Relevant DCP objectives in this plan in relation to these paragraphs include:

- Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:*
- Limiting excavation, "cut and fill" and other earthworks;*
 - Discouraging the alteration of the natural flow of ground and surface water;*
 - Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
 - Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

See also paragraph 4.1.8 Development on Sloping Sites (Planning Principles).

See also paragraph 3.3.2 Preservation of Trees and Bushland V.

Comment:

Not applicable – no change to merit assessment granted under DA2025/0088.

Part 5 – Special Character Precincts, Areas and Sites

Comment:

Not applicable – the site is not identified in any special character precincts, areas or sites.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

Dwelling-houses, Semi-detached Dwellings and Secondary Dwellings

- *2 parking spaces for each dwelling house, semi-detached dwellings and secondary dwellings.*

***Note:** While no visitor parking is required for a dwelling house or semi-detached dwellings; one of the two spaces required for a Secondary Dwelling may be used as a visitor space for both the secondary and principle dwelling. See paragraph 4.1.6 for exceptions which may be considered by Council.*

Comment:

Complies - The proposal retains two parking spaces as approved under DA2025/0088.

5. Matters for Consideration Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979

The following matters are to be taken into consideration when assessing an application pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

(a) The provisions of:

(i) The provision of any Environmental Planning Instrument

Comment: The proposal is permissible and consistent with the intent of the Manly Local Environmental Plan and Development Control Plan as they are reasonably applied to the proposed works.

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

Comment: Not applicable.

(iii) Any development control plan

Comment: The proposal has been reviewed and assessed under Manly Development Control Plan.

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

Comment: Not applicable.

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

Comment: Not applicable.

(v) (repealed)

(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,

Context and Setting:

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

Comment: The proposed development has been designed to the character and amenity of the locality. The proposal is of a height, bulk and scale which is consistent with recent approvals and the future character of the precinct. The proposal will have no adverse residential amenity impacts in terms of views, privacy or overshadowing to the neighbouring properties.

ii. What are the potential impacts on adjacent properties in terms of:

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

Comment: These matters have been discussed in detail earlier in this report. The works have been designed such that potential impacts are minimal and within the scope of the built form controls.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

Comment: The proposal retains the approved carport for two car spaces.

Public Domain

Comment: The proposed development will have no adverse impact on the public domain.

Utilities

Comment: Existing utility services will connect to service the dwelling.

Flora and Fauna

Comment: The proposal complies with the open space and landscaping controls for the site.

Waste Collection

Comment: Normal domestic waste collection applies to the existing dwelling house.

Natural hazards

Comment: The site is identified within bushfire and flood prone land. The proposed amendments retain the merit assessment granted under DA2025/0088.

Economic Impact in the locality

Comment: The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed works.

Site Design and Internal Design

i) Is the development design sensitive to environmental considerations and site attributes including:

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*

- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

Comment: These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the general principles, desired future character and built form controls.

ii) How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

Comment: The proposed development can comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) What would be the impacts of construction activities in terms of:

- *The environmental planning issues listed above*
- *Site safety*

Comment: The proposal will employ normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

Comment: The site is located in an established residential area. The locality has a variety of property types and sizes. The existing surrounding development comprises a mix of one, two and three storey dwelling houses. The adjacent development does not impose any unusual or impossible development constraints. The proposed development will not cause unmanageable levels of transport demand with no change of use to the existing dwelling proposed.

(d) Any submissions received in accordance with this act or regulations

Comment: No submissions are available at this time.

(e) The public interest

Comment: The proposed works are permissible and consistent with the intent of MLEP2013 and MDCP controls as they are reasonably applied to the proposed dwelling house, and associated works. The development would not be contrary to the public interest.

In our opinion, the development satisfies the planning regime applicable to development on this particular site having regards to the considerations arising from its context.

The proposal is acceptable when assessed against the heads of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979* (as amended), and is appropriate for the granting of consent and accordingly, is in the public interest.

6. Summary and Conclusion

The proposal for a Section 4.55 (2) Modification application relating to DA2025/0088 approved for alterations and additions to a dwelling housing is permissible and consistent with the intent of the built form controls as they are reasonably applied to the proposed works. It is considered that the proposal is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The merits of the application have been assessed in accordance with the provisions of the relevant requirements of MLEP 2013 and the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended). There is no evidence that the impacts of the development would warrant amendment to the subject proposal or justify refusal. Where a variation is proposed, adequate documentation has been provided to support the application.
- The nature of the development is appropriate having regard to the area of the site, its geographical location, topography, constraints and adjoining land uses.

Accordingly, the proposal for a Section 4.55 (2) Modification application relating to DA2025/0088 at 2 New Street, Balgowlah, being Lot 12 in DP12383, is acceptable from environmental, social, and planning perspectives and approval should therefore be granted by Council.