

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0016
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 107 DP 1176623, 166 Pittwater Road MANLY NSW 2095
Proposed Development:	Review of Determination of DA2022/2270 for Alterations and additions to a semi-detached dwelling house
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Benjamin Matthew Laws Chloe Jean Wallace
Applicant:	Viewthru Pty Ltd

Application Lodged:	18/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/07/2023 to 07/08/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 326,798.21
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EXECUTIVE SUMMARY

This review application seeks consent for review of determination of DA2022/2270 for alterations and additions to a semi-detached dwelling house, which was refused on 6 June 2023.

The application is referred to the Development Determination Panel (DDP) due to Council's DDP criteria, which requires all Review Applications be referred to the DDP for determination.

During the notification period, two (2) submissions were received which raised concerns in relation

to overshadowing and solar access, works to the party wall, safety considerations, wall height and side setback non-compliances, sewage considerations, inconsistent plans, request for additional information, the installation of solar panels and air-conditioning units as well as the impact of the proposed development upon the party wall easement.

Critical assessment issues included Section 8.3 Environmental Planning and Assessment Act 1979, Zone R3 Medium Density Residential, 5.10 Heritage conservation, 6.9 foreshore scenic protection area, 3.2 Heritage considerations, 3.4.1 Sunlight access and overshadowing, 4.1.2 Height of buildings, 4.1.4 Setbacks, 4.1.5 Open space and landscaping, 4.1.6 Parking, vehicular access and loading.

While it is considered that the proposed development satisfies the relevant controls within the MDCP and MLEP 2013 and represents an acceptable built form, it is inconsistent with subclause (1)(b) of Clause 23 of the Environmental Planning and Assessment Regulations 2021, which requires owner's consent of the owner of the land. The assessment finds that there is insufficient information / detail which demonstrates that the proposed development does not breach the terms of the party wall easement and an absence of owners consent from 168 Pittwater Road inhibits the development from being supported, despite its merits.

This report concludes with a recommendation that the DDP review the determination of DA2022/2270 and concur with that determination and **refuse** this review application.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks a review of determination DA2022/2270, which sought consent for alterations and additions to a semi-detached dwelling, comprising the following works:

Ground Floor

- Reconfiguration of the rear floor plate in the following ways:
 - replacement of the living room with a bathroom and laundry
 - replacement of the dining room, study, kitchen, bedroom and bathroom with an open-plan kitchen, dining and living area.
 - internal staircase
 - new wall adjacent to the party wall
 - bi-fold doors at the rear of the dwelling

First Floor

- master bedroom with en-suite
- home office

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Local Environmental Plan 2013 - Zone R3 Medium Density Residential

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.2 Heritage Considerations

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 107 DP 1176623 , 166 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Pittwater Road.</p> <p>The site is irregular in shape with a splayed frontage of 7.1 metres along Pittwater Road with a depth of 38.8 metres. The site has a surveyed area of 244.5m².</p> <p>The site is located within the R3 Medium Density Residential and accommodates a single storey semi-detached brick dwelling.</p> <p>The site is relatively flat by nature.</p> <p>The site contains two pockets of landscaped area within the site's frontages. There is no evidence of any endangered species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by a mixture of multi dwelling housing, semi detached dwellings and commercial developments along the western side of Pittwater Road.

Map:



SITE HISTORY

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

DA2020/0482

Development application for the construction of a swimming pool and spa was approved on 30 June 2020, subject to conditions.

DA2022/2270

Development application for alterations and additions to a semi-detached dwelling house was refused on 6 June 2023. The following was the reason for refusal of this application:

Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the Development Application does not comply with the provisions of Clause 23 of the EP&A Regulation 2021 and must be refused as the application does not constitute a legitimate Development Application.

Particulars:

i). The application is not accompanied by sufficient information in the form of owners consent from No. 168 Pittwater Road for the works on and over the common boundary and those subject to the existing easement for support of the party (or common) wall between the two properties.

APPLICATION HISTORY

- This application was uploaded to the NSW Planning Portal on 10 July 2023.

- Council accepted this application on 18 July 2023.
- This application was publicly notified between 24 July 2023 to 7 August 2023. Two (2) submissions were received, both of which came from or on behalf of the owners of 168 Pittwater Road, Manly.
- A preliminary assessment was undertaken, which included comments from internal referrals. Council's Heritage Officer raised concern regarding the removal of the fireplace from the ground floor bathroom, and the inconsistency with the proposed amended plans and the Heritage Impact Statement. A Request for Further Information (RFI) letter was prepared and sent to the Applicant on 17 August 2023 requesting the Heritage Impact Statement be updated to show the correct ground floor plan. The Applicant provided an updated Heritage Impact Statement on the same day it was requested.
- Throughout the assessment process it was found that the proposed amendments to address the reason for refusal was unsatisfactory and insufficient information was provided to satisfy Council's concerns regarding the impact upon the easement between 168 and 166 Pittwater Road, Manly.
- On 24 August 2023, another RFI was sent to the Applicant advising there was an issue with land owner's consent, noting that while the amended plans show an attempt to rectify the previous reason for refusal it was not to the level of satisfaction of Council with regards to the terms of the easement. The Applicant was requested to obtain and provide land owner's consent from the owner(s) of 168 Pittwater Road, Manly or provide information that shows any works to the party wall is to be removed, and such amendments are to be diagrammatically supported through detailed construction drawings and construction methodology which is to demonstrate how the proposed development complies with the terms of the existing easement.
- On 31 August 2023, the Applicant provided a response to the second RFI with drawing no. 1/1 Rev A dated 17 February 2023 'Plans, Sections and Details' prepared by Geoff Hopkins & Associates.
- On 6 September 2023, Council advised the Applicant that there remains insufficient information that the proposed development will not impact upon the easement, and that the application would be referred to the DDP (in accordance with Council's DDP Charter) by way of **refusal**. Furthermore, the Applicant was also advised to obtain a copy of the easement terms via a search of the NSW Land Registry Services.
- On 7 September 2023, Council was advised by the Applicant's Planner that the owner's were in the process of obtaining a copy of the terms of the easement.
- As of 18 September 2023, Council has not received further correspondence from the Applicant, or on behalf of the Applicant.
- On 20 September 2023, the Applicant was again advised that the information provided did not satisfy Council's concerns relating to the potential impact upon the terms of the easement. The Applicant was also advised again that the application would be referred to DDP by way of a **refusal**, and that they would have the opportunity to address the DDP should they wish to do so. The Applicant was also advised that no additional information would be accepted.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent, should the development be approved.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an updated Heritage Impact Statement via a Request for Further Information (RFI) through the NSW Planning Portal and email on 17 August 2023. On the same day, the Applicant provided an amended Heritage Impact Statement to the satisfaction of Council's Heritage Planner. Upon further assessment, an additional RFI letter was sent to the Applicant on 24 August 2023 advising that the amendments made to address the previous reason for refusal did not satisfy Council's concerns regarding land owner's consent and compliance with the terms of the easement applicable to the subject site and the adjoining property, being 168 Pittwater Road, Manly. On 31 August 2023, the Applicant provided a response to the second RFI with drawing no. 1/1 Rev A dated 17 February 2023 'Plans, Sections and Details' prepared by Geoff Hopkins & Associates. As this information did not alter the proposed development, in accordance with Council's Community Participation Plan (CPP), the application is not required to be re-notified.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is capable of compliance by condition in the event that the development is approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is not relevant to this</p>

Section 4.15 Matters for Consideration	Comments
	<p>application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed via a condition of consent, in the event that the development is approved.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being addressed via a condition of consent, in the event that the development is approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 6 June 2023 and the notice of determination was issued on 7 June 2023. The review was lodged on the NSW Planning Portal on 10 July 2023 and formally accepted by Council on 18 July 2023. The application is to be considered by the Development Determination Panel on 11 October 2023, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report. Notwithstanding the amendments made to the proposed development, Council remains unsatisfied that these changes have addressed the reason for refusal of DA2022/2270, which stipulated the following:

Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the Development Application does not comply with the provisions of Clause 23 of the EP&A Regulation 2021 and must be refused as the application does not constitute a legitimate Development Application.

Particulars:

i). The application is not accompanied by sufficient information in the form of owners consent from No. 168 Pittwater Road for the works on and over the common boundary and those subject to the existing easement for support of the party (or common) wall between the two properties.

The easement details is as follows:

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFIT À PRENDRE
INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF
THE CONVEYANCING ACT, 1919**

(Sheet 1 of 2 sheets)

Plan: DP1176623

Plan of Redefinition of Lots 7 & 8 in D.P.456032

**Full Name and Address
of the Registered Proprietor
of the Land:**

Lawrence Melville Tomlinson of 7 Queen Street,
Mosman, NSW, 2088

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement or profit à prendre to be created and referred to in the plan.	Burdened lots or parcels	Benefited lots road(s), bodies or Prescribed Authorities
1.	Easement for Services Variable Width [A]	107	108
2.	Easement for Services Variable Width [B]	108	107
3.	Easement for Support 0.13 wide [C]	107	108
4.	Easement for Support 0.13 Wide [D]	108	107

PART 2 (Terms)

Terms of Easement for Support 0.13 wide thirdly and fourthly referred to in the plan:

1. The owner of the lot benefited:-

(a) may insist that improvements on that part of the lot burdened specified by the letter [C] or [D] as appropriate and any future improvements erected on the same foundations and requiring for stability the same or any less support than the said improvements from the soil and other improvements erected on the lot burdened be supported, upheld and maintained by the soil and improvements on the said part of the lot burdened and shall remain supported, upheld and maintained by the soil and existing improvements on the lot burdened to ensure the stability of improvements on the lot benefited;

(b) must keep the improvements supported in good repair and safe condition;

(c) may do anything reasonably necessary for the above purposes including -
- entering the lot burdened
- taking anything on to the lot burdened
- carrying out work

Based on the information provided with this review application, Council is not satisfied that the proposed development can comply with the terms of the easement, as the easement extends to the foundations and footings of the dwelling. The easement restrictions are that no more structural load can be placed upon those footings and the soil to which lot relates. The information which accompanies this application does not adequately address this.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/07/2023 to 07/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Collard Maxwell Architects Pty Ltd	Level 1 2 Glen Street MILSONS POINT NSW 2061
Mr Sebastian De Brennan	Level 7 53 Martin Place SYDNEY NSW 2000

The following issues were raised in the submissions:

- **Overshadowing and solar access**
- **Common boundary, wall height and side setback non-compliances & safety considerations**
- **Sewage considerations**
- **Inconsistent plans**
- **Request for additional information**
- **Solar panels and air conditioning units**
- **Easement for services**

The above issues are addressed as follows:

- **Overshadowing and solar access**

The submissions raised concerns that the proposed first floor addition will create unreasonable overshadowing to adjoining properties.

Comment:

The proposed development is accompanied by shadow diagrams, which shows overshadowing to the adjoining property to the south, being 164 Pittwater Road. The proposal has been assessed against the requirements of control 3.4.2 Sunlight Access and Overshadowing of the Manly DCP. The assessment has found that the proposal is reasonable with the provisions for solar access and does not unreasonably overshadowing the adjoining properties.

This issue does **not** warrant reason for refusal of this application.

- **Common boundary, wall height and side setback non-compliances & safety considerations**

The submissions raised concerns that the proposed development results in a numerically non-compliant wall height along the southern elevation, which is inconsistent with the requirements of control 4.1.2.1 Wall Height of the Manly DCP. Further, a submission raised concerns that the proposed works will continue to give rise to unreasonable impacts to the party wall (including concerns about the safety of the wall) that is shared with 168 Pittwater Road.

Comment:

It is acknowledged that the proposed development results in non-compliances to the wall height and side setback controls stipulated within the Manly DCP. The merits of these non-compliances have been assessed against the objectives of the controls 4.1.2.1 Wall Height and 4.1.4.2 Side Setbacks and Secondary Street Frontages of the Manly DCP. The assessment has found that the proposed development is consistent with the objectives of these controls and thus responds appropriately to the constraints of the subject site. Further, the proposal remains commensurate with the existing and surrounding built form of residential developments, without creating unreasonable amenity impacts upon adjoining properties.

Finally, an existing easement is located along certain areas of the first floor for support of the party (or common) wall. As works to the party wall formed a reason for refusal under the original development application, the Applicant endeavored to minimise this by introducing an additional wall along the party wall so there was no impact. However, the information provided has not been to the satisfaction of Council whereby there remains insufficient information as to whether the proposal complies with the terms of the easement.

This issue **warrants** reason for refusal of this application.

- **Sewage considerations**

The submissions raised concerns that the existing services may be impacted by the increased number of fixtures connected to the sewer line.

Comment:

In accordance with Clause 6.12 Essential Services of the Manly LEP 2013, the maintenance or extension of existing services is not a relevant consideration when issuing a development consent.

This issue does **not** warrant reason for refusal of this application.

- **Inconsistent plans**

The submissions raised concerns that DA//05 Site // Entry level plan // existing shows the steps between the lawn and the deck across the full width of the lawn rather than against the pool fence. The submission is seeking clarity as to whether this is really existing or proposed.

Comment:

The boundary identification survey shows that the steps from the rear deck to the lawn are against the pool fence. As such, the 'existing' ground floor plan is accurate. The proposal does not seek to change the steps from the deck to the lawn.

This issue does **not** warrant reason for refusal of this application.

- **Request for additional information**

The submissions requested that the following information is provided prior to the issue of a Construction Certificate:

- a Dilapidation Report is provided.
- a Structural Engineers Report and structural adequacy certificate is issued by a suitably qualified structural engineer
- an Acoustic report to ensure appropriate acoustic separation between the subject site and 168 Pittwater Road.

Further, should consent be granted, this submission requests that a condition related to the management of hazardous material is included within the consent.

Comment:

Where it is deemed necessary and should the application be approved, conditions would be recommended to ensure the appropriate and necessary reports are provided prior to the issue

of the Construction Certificate or the Occupation Certificate.

This issue does **not** warrant reason for refusal of this application.

- **Solar panels and air conditioning units**

The submissions note that the application does not appear to include solar panels or air-conditioning units. The submission requests that, should these become part of the development, the submission requests that standard conditions are recommended to prevent noise issues from any equipment.

Comment:

The proposed plans do not show air-conditioning units and solar panels. As such, Council cannot impose conditions relating to works that are not part of the proposal.

This issue does **not** warrant reason for refusal of this application.

- **Easement for services**

The submissions raised concerns that the proposed development will impact upon the easement for services at the rear of the properties.

Comment:

The proposed plans (specifically DA/08 Roof Plan, Review D, dated 23 June 2023) shows that the existing roof over the easement for services (indicated as [A] on the deposited plan) is to be retained, with the notation stating 'existing lean to roof retained'.

However, the assessment of this application has found that insufficient information has been provided to show that the proposed development will not impact upon the easement for support (as indicated as [C] on the deposited plan).

This issue **warrants** reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, subject to conditions.</i></p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>

Internal Referral Body	Comments				
Environmental Health (Solid Fuel/Oil Heater)	<p>Supported. No conditions required.</p> <p>General Comments The applicant has advised</p> <p>"the layout of the ground floor bathroom under this review application does not have the fireplace. For external visual appearances to adhere to the Heritage Conservation Area.... and the retention of the chimneys and fireplaces in Bedrooms 2 and 3.</p> <p>As a heritage listed building we do not wish to contradict any heritage requirements; therefore if fireplaces are not to be used or be upgraded no action is required. Council would prefer open fireplaces not be used at all due to air pollution and inefficient burning mainly. However any use causing a nuisance can be dealt with at that time.</p> <p>Any future conversion to Australian Standard approved solid fuel heaters would require approval from Council at that time.</p> <p>Environmental Health supports the proposal.</p> <p>Planner Note: The subject site is not a heritage listed item. Rather, it is located within a Heritage Conservation Area.</p>				
Landscape Officer	<p>Supported, subject to conditions.</p> <p>Review application REV2023/0016, of development application DA2022/2270, is assessed by an alternative Landscape Officer.</p> <p>Landscape Referral raise no concerns as related to landscape outcomes following review of the reports and plans under this application. It is noted that landscape works under a previous consent are completed, and as such and in review of this application, Landscape Referral provide standard Council conditions for tree and vegetation protection should the application be approved.</p>				
Strategic and Place Planning (Heritage Officer)	<p>Supported. No conditions required.</p> <table><tr><td>HERITAGE COMMENTS</td></tr><tr><td>Discussion of reason for referral</td></tr><tr><td>The proposal has been referred to Heritage as the subject site is located within a conservation area and in the vicinity of a heritage item: C1 - Pittwater Road Heritage Conservation Area Item I208 - Service station (former) - 167 Pittwater Road, Manly</td></tr><tr><td>Details of heritage items affected</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site is located within a conservation area and in the vicinity of a heritage item: C1 - Pittwater Road Heritage Conservation Area Item I208 - Service station (former) - 167 Pittwater Road, Manly	Details of heritage items affected
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Details of heritage items affected					

Internal Referral Body	Comments																					
	<p>Details of the Heritage Conservation Area as contained within the Manly Heritage inventory are:</p> <p>C1 - Pittwater Road Heritage Conservation Area</p> <p><u>Statement of Significance</u></p> <p>This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical Description</u></p> <p>The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed seperately. Adjacent streets generally comprise a consistant pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.</p>																					
	<table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table>	Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
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RAIA Register of 20th Century Buildings of Significance	No																					
Other	No																					
	<p>Consideration of Application</p> <p>The proposal seeks consent for alterations and additions including a first floor addition to the existing semi-detached dwelling, that contributes positively to the Heritage Conservation Area and its context. The existing property is an intact example of a pair of single-storey semi-detached dwellings from the Federation era. This application is for the review of DA2022/2270, which was refused on 6 June 2023. The current proposal involves an amendment to the party wall between the adjoining semi and does not involve any modifications which impact upon the heritage values of the dwelling and the HCA.</p>																					

Internal Referral Body	Comments
	<p>Previous comments on this Revision required the Heritage Impact Statement (HIS) to be updated to reflect the plans submitted with this application, in particular the proposed ground floor plan on page 23 of the report.</p> <p>As an amended HIS has been submitted with the amended plan included, Heritage now has no further concerns with this application.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to Conditions</i></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent, should this application be approved.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A463505_02, dated 13 July 2023).

Should this application be approved, a condition has been included in the recommendation of this

report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections. Should this application be approved, a relevant condition would be recommended within this report to ensure compliance with Ausgrid recommendations.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

This Clause applies to the subject site. As the proposed development is sited entirely over the existing building footprint, it is considered that the proposal will not adversely or unreasonably impact upon the matters as prescribed in the above clause.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

As the proposed development is sited entirely over the existing building footprint, it is considered that the proposal will not adversely or unreasonably impact upon the matters as prescribed in the above clause.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development is unlikely to create an increased risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.6m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (146.76m ²)	FSR: 0.56:1 (137.0m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone R3 Medium Density Residential

Proposed Use	Permitted or Prohibited
Alterations and additions to a semi-detached dwelling house	Permitted with consent

The underlying objectives of the R3 Medium Density Residential zone:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposed development will retain the existing semi-detached dwelling and, therefore, continues to provide for the housing needs of the community within the R3 Medium Density Residential zone.

The proposal **achieves** this objective.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposed development will continue to provide for a variety of housing types within the R3 Medium Density Residential zone by retaining the use of the existing dwelling house.

The proposal **achieves** this objective.

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

Comment:

Zone R3 Medium Density Residential permits for a variety of land uses, subject to consent. The proposed development seeks to retain the existing residential use of the site. In this instance, the proposal continues the current land use that will provide facilities or services that meets the day to day needs of the residents.

The proposal **achieves** this objective.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The proposed development will positively contribute to the revitalisation of the surrounding residential area. Further, the proposed development is considered to be suitable in the context of the subject site and its surrounds.

The proposal **achieves** this objective.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination*

Comment:

The proposed development seeks to maintain the existing use of the dwelling house. Therefore not impacting upon the retention of tourist accommodation of Manly.

The proposal **achieves** this objective.

5.10 Heritage conservation

The subject site is located within the Pittwater Road Conservation Area, which is generally defined by its 19th century atmosphere due to its scale, width and the number of extant Victorian structures.

The proposed development comprises works to the internal ground floor area and the addition of a first floor addition at the rear of the dwelling. In this instance, the proposed works will not be easily discernible when viewed from Pittwater Road.

Notwithstanding, the proposal was referred to Council's Heritage Planner, who raised no objections to the proposal.

6.9 Foreshore scenic protection area

Under this clause, 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:

The proposed development is sited entirely over the existing building footprint, which includes internal alterations to the ground floor and the addition of a modest first floor addition to accommodate a master bedroom, en-suite and study. The proposal achieves compliance with both relevant development standards of Clause 4.3 Height of Building and Clause 4.4 Floor Space Ratio of the *Manly Local Environmental Plan 2013* (MLEP 2013). The proposal generally achieves compliance with the relevant built form controls, and where it fails to do so, it does not create unreasonable amenity impacts upon the subject site and adjoining properties. Further, the location of the subject site is such that the surrounding built and natural environments will obscure it from view of Manly Beach and Manly Wharf.

In this instance, the proposed development will not create a detrimental impact upon the visual amenity of the harbour or coastal foreshore, nor will it overshadow these areas or create any loss of views. For the reasons as detailed above, the proposal protects and improves the scenic quality of the coastline. Further, the proposed development is suitable for the context of the subject site. The proposed development will not create conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 244.6m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	Southern Elevation 6.5m (based on gradient 0)	6.55m	0.7%	No
	Northern Elevation 6.5m (based on gradient 0)	6.95m	6.9%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.4m	N/A	Yes

	Pitch: maximum 35 degrees	29 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	2.7m	N/A	No, existing & unchanged
4.1.4.2 Side Setbacks and Secondary Street Frontages	Southern Boundary 2.18m (based on proposed wall height)	Ground Floor 0.8m - 2.38m	63.3% max.	No, existing & unchanged
		First Floor 0.9m - 2.97m	58.7% max.	No
	Northern Boundary 2.31m (based on proposed wall height)	Ground Floor Nil (party wall) - 0.5m	N/A	No, existing & unchanged
		First Floor Nil (party wall) - 0.5m	100% max.	No
	Windows: 3m	Ground Floor 0.8m - 2.38m	73.3% max.	No
		First Floor 2.0m - 2.5m	33.0% max	No
4.1.4.4 Rear Setbacks	8m	Ground Floor <i>Dwelling:</i> 9.0m <i>Deck:</i> 6.35m	N/A N/A	No, existing & unchanged
		First Floor 9.0m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (134.53m ²) of site area	39% (96.0m ²)	28%	No, existing & unchanged
4.1.5.2 Landscaped Area	Landscaped area 35% (33.6m ²) of proposed open space	44.2% (42.4m ²)	N/A	Yes, existing & unchanged
4.1.5.3 Private Open Space	18.0m ²	69.6m ²	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	100%	No, existing & unchanged

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

Description of non-compliance

The subject site is located within a Heritage Conservation Area and thus the proposed design is expected to consider the heritage character of the locality. The proposed first floor addition is sited at the rear of the dwelling, ensuring that the impact upon the street frontage and heritage conservation area is minimal. Council's Heritage Officer has reviewed the proposed development and, subject to recommended conditions, are satisfied that the proposal satisfactorily integrates into the Heritage Conservation Area.

Merit consideration:

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

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

Comment:

The proposed development has been reviewed by Council's Heritage Officer, who has not identified any issues with the amended proposal. This assessment has found that the proposed development provides a design that is consistent and appropriate within the context of the subject site and the heritage character of the locality. The subject site, while located within the foreshore scenic protection area, is not within visual proximity to the foreshore areas surrounding Manly. Therefore, the proposal does not unreasonably impact upon the heritage conservation area to which the subject site is located. The subject site is not known to have any Indigenous artefacts or items/places of natural significance.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

Comment:

As detailed above, and throughout this assessment report, the assessment has found that the proposed first floor addition is considered to be an appropriate design that reasonably contributes to the Heritage Conservation Area.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

Comment:

As detailed above, and throughout this assessment report, the assessment has found that the proposed first floor addition is considered to be an appropriate design that reasonably contributes to the Heritage Conservation Area.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

Comment:

For the reasons detailed above, the proposed development is compatible with the surrounding character of the locality with regard to the Heritage Conservation Area.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

Comment:

The proposed development was referred to Council's Heritage Officer who raised no concern with the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

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

Comment:

The proposed development creates overshadowing to the windows of the adjoining property, being 164 Pittwater Road. These windows are sited to service rooms, bedrooms and a kitchen.

This assessment has found that the proposed development provides equitable access to light and sunshine when considering that existing site constraints and the compliant building height of the proposed development. The subject site is located within a Heritage Conservation Area and from a heritage perspective the proposed works were not to be visible from the street frontage and thus limits the first floor addition to the rear of the existing building footprint. Further, the east-west orientation of the site and adjoining properties means that the windows along the northern elevation on the ground floor of 164 Pittwater Road are more vulnerable to overshadowing. In this particular instance, and the fact the subject site and surrounding properties are located within the R3 Medium Density Residential zone means that protection of solar access is harder to achieve.

Based on the above, the extent of overshadowing to 164 Pittwater Road is considered to be reasonable in the context of the site and surrounding allotments.

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.*

Comment:

3.4.1.2 (a) of the Manly DCP requires at least 2 hours of solar access be retained for the living room windows that presently enjoy solar sunlight between 9am and 3pm on 21 June (being the winter solstice). As detailed above, the windows along the northern elevation of the ground floor of 164 Pittwater Road are vulnerable to overshadowing due to the lot configuration and medium residential zoning of the subject site and adjoining properties, which makes strict compliance with solar access requirements difficult. It shall be noted that a submission was not received from the occupants of 164 Pittwater Road.

As indicated within the shadow diagrams provided, the north-facing windows of 164 Pittwater Road will be overshadowed between 9am and 3pm. While this is insufficient solar access to these windows, it is unavoidable. Any first floor addition will create an impact upon solar access to these windows. The proposed development has been sited to the rear of the dwelling so as to mitigate any unreasonable

impact through a compliant building height and increased first floor setbacks. Based on this, the proposed development provides equitable access to sunlight when considering the overall impact to 164 Pittwater Road and the outdoor private open space.

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:

The proposed first floor addition provides varied side setbacks, ranging between 0.9 metres and 2.97 metres to the southern boundary. The site has a total width of 7.5 metres and the existing building is a semi-attached dwelling, which creates site constraints that limits the ability for development on the site. In this instance, the proposal provides a high level of modulation and results in a reasonable and acceptable building bulk. The side setbacks are maximised to the point where the proposed internal habitable areas of the first floor addition provide reasonable internal amenity.

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

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

Description of non-compliance

4.1.2.1 Wall Height

This control requires development to result in a maximum wall height that is calculated based on the slope of the land sited under the proposed wall. The subject site is located on a flat block, with a gradient of 0, which requires a maximum wall height of 6.5 metres along the northern and southern elevation.

The proposed wall heights are as follows:

- Northern boundary: 6.95 metres (which presents a variation of 6.9%)
- Southern boundary: 6.55 metres (which presents a variation of 0.7%)

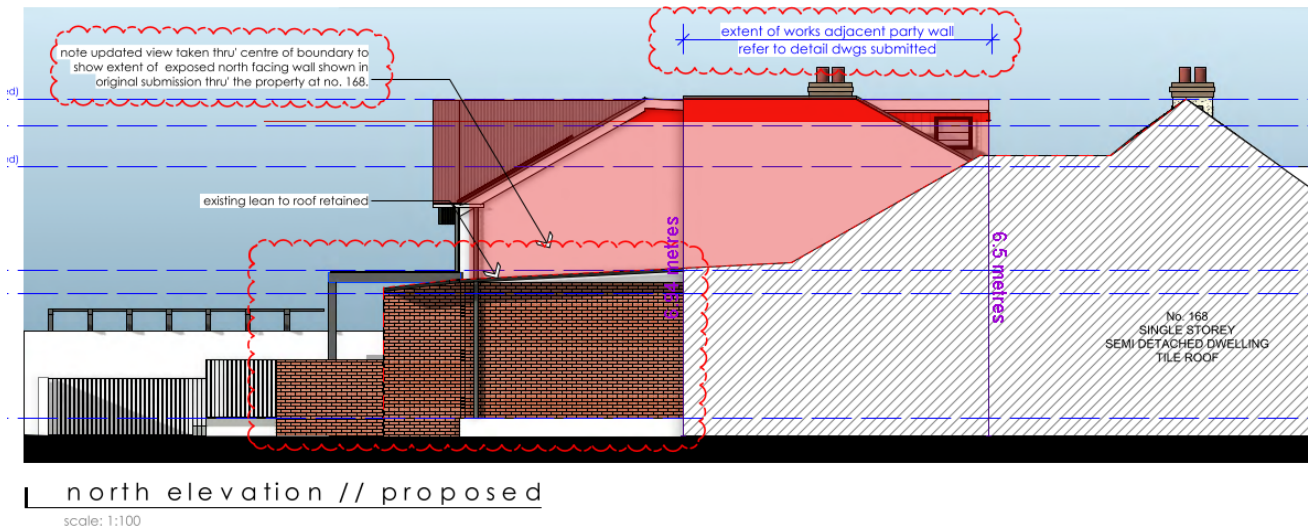


Figure 1. Northern elevation wall height non-compliance (extent shaded as red).



Figure 2. Southern elevation wall height non-compliance (extent shaded as red).

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause, instead, relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013.

An assessment against these objectives is as follows:

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

Comment:

The proposed maximum building height is 6.6 metres, which is significantly lower than the maximum building height of 8.5 metres as prescribed within Clause 4.3 of the MLEP 2013, with a low pitch roof and varied side setbacks which provides for building mass articulation. Further, the proposed first floor addition is sited at the rear of the dwelling, with minimal impact upon the existing streetscape. The non-compliances will not be easily discernible from the street frontage. Therefore, the non-compliances along both the northern and southern elevations are reasonable within the context of the subject site and its surrounds.

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

Comment:

The proposed first floor addition is reasonably articulated with varied setbacks to the southern boundary. Further, the proposed first floor addition makes use of alternative materials and colours which further contributes to breaking up the built form. The proposal provides a low roof pitch at the rear of the dwelling which further minimises the bulk and scale of the built form. A flat roof design was considered, which would further reduce the built form, however a flat roof would be inconsistent with the character of the area. In light of this, the proposed development has been designed in such a way that is consistent with the character of the locality, with minimal unreasonable impacts upon adjoining properties.

(c) to minimise disruption to the following—

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposed development does not result in view loss.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The extent of overshadowing has been addressed elsewhere in this report under section 3.4.1 Sunlight Access and Overshadowing. This assessment found that, in the context of the subject site, the overshadowing is considered acceptable.

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

Comment:

The subject site is located within, and surrounded by, the R3 Medium Density Residential zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

4.1.4.2 Side Setbacks and Secondary Street Frontages

This control requires development to be setback from the side boundary at a distance calculated from one third of the proposed wall height.

Based on these requirements, the proposed wall heights are as follows:

- *Northern elevation:* 6.95 metres
- *Southern elevation:* 6.55 metres

Therefore, the required side setbacks are:

- *Northern elevation:* 2.31 metres
- *Southern elevation:* 2.18 metres

The proposed side setbacks are:

- *Northern Elevation:*
 - Ground floor: Nil - 0.5 metres (presents a maximum variation of 100%). This is existing and unchanged.
 - First floor: Nil - 0.5 metres (presents a maximum variation of 100%).
- *Southern Elevation:*
 - Ground floor: 0.8 metres - 2.38 metres (presents a maximum variation of 63.3%). This is existing and unchanged.
 - First floor: 0.9 metres - 2.97 metres (presents a maximum variation of 58.7%).

Windows

This control requires windows to be setback 3.0 metres from the side boundaries. Due to the existing site constraints, any proposed windows will result in a numerical non-compliance to this requirement. One (1) window is proposed along the southern elevation on the first floor level which is sited 2.49 metres from the side boundary. This window is sited to a home office, which is a low-use room. As such, there privacy impact arising from this window is considered acceptable.

Merit consideration:

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

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

Comment:

The existing ground floor non-compliances are not changing under this development application. The proposed first floor addition, however, results in numerical non-compliances to both the northern and southern boundaries (noting that the northern boundary is shared with adjoining dwelling at 168

Pittwater Road). The nil setback to the party is required and acceptable. Further, in accordance with the services easement, the 0.5 metre setback to the northern boundary continues to allow access for services. As the proposed first floor addition is sited at the rear of the dwelling, the impact upon the existing streetscape is considered acceptable and reasonable in the context of the site's constraints.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

As detailed above, the additional window along the southern elevation is considered to result in a reasonable privacy impact between properties. The proposal will result in overshadowing to the northern elevation of 164 Pittwater Road. The assessment of the proposal against the requirements of control 3.4.1 Sunlight Access and Overshadowing found that the proposal results in a reasonable level of overshadowing, with consideration of the site constraints and orientation of the subject site and adjoining allotments. Finally, the proposal does not result in any view loss.

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

Comment:

Notwithstanding the proposed non-compliance, the ground floor level side setbacks do not change. Thus allowing for continued site access.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development is sited entirely over the existing building footprint. Therefore, the proposal does not impact upon the existing landscape features on the subject site.

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

Comment:

The subject site is not located within bushfire zone. Therefore, this objective is not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

The site, as existing, is numerically non-compliant with the required minimum total open space provision. The proposed development is sited entirely over the existing building footprint and, therefore, does not impact upon the existing non-compliant total open space.

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

The subject site, as existing, does not have any off-street parking. The proposed development does not seek to change this. As such, a detailed merit assessment is not required in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$3,268 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$326,798.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

This proposal, for review of determination of DA2022/2270 for alterations and additions to a semi-detached dwelling house, has been referred to the Development Determination Panel (DDP) in accordance with Council's DDP criteria, which requires all Review Applications be determined by DDP.

The concerns raised in the objections have been addressed within the assessment report. The proposal is considered to be unacceptable due to insufficient information relating to the impact upon the existing easement, as indicated as C on the survey plan.

The critical assessment issues include Section 8.3 Environmental Planning and Assessment Act 1979, Zone R3 Medium Density Residential zone, 5.10 Heritage considerations, 6.9 Foreshore scenic protection area, 3.4.1 Sunlight access and overshadowing, 4.1.2 Height of buildings, 4.1.4 Setbacks, 4.1.5 Open space and landscaping and 4.1.6 Parking, vehicular access and loading.

While it is considered that the proposed development satisfies the relevant controls within the MDCP and MLEP 2013, it is inconsistent with subclause (1)(b) of Clause 23 of the Environmental Planning and Assessment Regulations 2021, which requires owner's consent of the owner of the land. As there is an issue surrounding works that may impact upon the easement, the lack of owner's consent from the owner's of 168 Pittwater Road means the DDP must refuse this development application.

The proposal has therefore been recommended for **refusal**.

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No REV2023/0016 for the Review of Determination of DA2022/2270 for Alterations and additions to a semi-detached dwelling house on land at Lot 107 DP 1176623, 166 Pittwater Road, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the Review Application does not comply with the provisions of Clause 23 of the Environmental Planning & Assessment Regulation 2021 and must be refused as the application does not constitute a legitimate review application.

Particulars:

- i) The application is not accompanied by sufficient information to satisfy Council's concerns that the proposed development can comply with the terms of the Easement.
- ii) In the absence of sufficient information that the proposal can comply with the terms of the Easement, the application is not accompanied by sufficient information in the form of land owner's consent from No. 168 Pittwater Road, Manly for the proposed works to the existing dwelling at 166 Pittwater Road, Manly.