

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0575
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot CP SP 11874, 5 Commonwealth Parade MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA436/2008 relating to a residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 11874
Applicant:	Platform Architects Pty Ltd

Application lodged:	29/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/02/2019 to 21/02/2019
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval

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

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.4.2 Privacy and Security

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

SITE DESCRIPTION

Property Description:	Lot CP SP 11874 , 5 Commonwealth Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject property is commonly known as 5 Commonwealth Parade, Manly and legally known as SP 11874. The site is located on the western side of Commonwealth Parade. The property is an irregular rectangle in shape, has a frontage of 15.4m to Commonwealth Parade and 9.2m to The Crescent, an average depth of 38.8m and an overall site area of 460m².</p> <p>The property currently contains a three-storey residential flat building with vehicular access via an existing driveway from</p> <p>The Crescent to an existing single garage to the rear of the existing dwelling. The property slopes approximately 6m from west to east. The adjacent property to the north, at 1-3 Commonwealth Parade, is developed with a three-storey residential development. The adjacent property to the south, at 7 Commonwealth Parade, is developed with a seven-storey residential development. Development in this area of Commonwealth Parade consists of residential developments.</p>

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:

- **DA211/2004** - Demolition and construction of a new four-unit residential flat building, and strata subdivision. Approved by DAU on 29 September 2006.
- **DA436/2008** : Amendment to the basement level design to minimise the environmental impact. Approved by DAU on 3 March 2009.
- **DA436/2008 – Part 2**: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building - involving the conversion of upper level apartment into two apartments - one (1) two (2) bedroom apartment and one (1) one (1) bedroom apartment with changes to the internal wall, door and windows. Withdrawn by the applicant on 13 August 2013.
- **DA436/2008 – Part 3**: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building – involving conversion of a car parking space into a storage area, level 1, 2 and 3 extension, pergola extensions to level 2 and level 3, internal alterations, delete planter box on level 1, addition of an dividing screen and changes to window and doors. Approved by DAU on 9 November 2016.
- **DA436/2008- Part 4**: Section 96 to modify a Residential Flat Building including the following:
 - Reduction in four units to three;
 - Reduction in parking requirement and introduction of a car stacker;
 - Reduction in basement level and adjustment of all other floor levels (increased floor to ceiling height, no additional overall height);
 - Changes to windows, doors, façade and eastern balconies;
 - Internal reconfiguration;
 - Addition of privacy screening to western balconies; and
 - Addition of hydrant and drencher booster assembly cupboards.

- **MOD2018/0161**- Modification of Development Consent DA0436/2008 granted for basement additions to a three (3) storey Residential Flat

Building Including:

Basement

- Relocation of stairs
- Relocation of mechanical services
- Relocation of garbage room
- Additional excavation for car stacker for car lift

Ground Level

- Changes to layout and addition of bedroom/ensuite
- Cut out of slab
- New roof at northern end of room
- Slight increase in floor space to Bedroom 2

First Level

- Changes to internal layout
- Decrease to south side setback and increase at north side setback
- Slight increase in floor space to Bedroom 3

Second Level

- Changes to internal layout
- Slight increase in floor space to Bedroom 3

Third Level

- Changes to internal layout

Roof Level

- Addition of skylights
- Extension of roof to cover extension of lower levels

Status of Consent No. DA436/2008

It has been confirmed that Development Consent No. **DA436/2008** has not lapsed, therefore, this modification can be dealt with.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications to the approved Residential Flat Building are detailed as follows:

Basement Floor Plan

- Changes to stair and lift
- Realignment of parking space 3 and deletion of turntable
- Increase in size of store 3
- Replacement of swing metal garage door with overhead door
- Round planter to Commonwealth Parade frontage

Ground Floor Level Plan

- Reconfiguration of floor plate including removal of storage area

- New southern courtyard accessed from Bedroom 3
- Realignment of northern entrance courtyard
- Change to Commonwealth Parade balcony including new curved sandstone wall, fixed privacy screening and a landscape planter.
- Existing "Nailsworth" sign to be on sandstone wall
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Level 1 Floor Plan

- Reconfiguration of floor plate including setting back of eastern wall and conversion to balcony (including planter boxes).
- Landscaping to western courtyard

Level 2 Floor Plan

- Change to side boundary alignment
- Changes to balconies including addition of privacy screening and landscape planters

Level 3 Floor Plan

- Narrowing and lengthening floor plate.
- Setting back of eastern facade and integration of privacy screening and planter boxes to 'Commonwealth Parade balcony'
- Increase in size of 'The Crescent facing Balcony' and integration of privacy screening and planter boxes

Roof

- Change from curved roof to flat roof and associated lower building height

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

Assessment Report for MOD2018/0575, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA436/2008.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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	Development Application DA436/2008 did not require concurrence from the relevant Minister, public authority or approval body.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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 relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
MOD2018/0575	Page 6 of 24

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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 Warringah 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</p>

Section 4.15 'Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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.

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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Ms Anne Maria Nicholson	1/36 Sydney Road MANLY NSW 2095
Mr Joshua James Robert Zoeller	2 / 1 A Fairlight Street MANLY NSW 2095
Mr Alexander Tryfon Manu	2 / 1 - 3 The Crescent MANLY NSW 2095
Ms Boronia Clair Foley	3/1 Commonwealth Parade MANLY NSW 2095

The following issues were raised in the submissions:

- **Impact on privacy caused by the angle of the facade. Request for more privacy screening**
- **A carpark exhaust vent and riser are situated on The Crescent boundary.**

With regard to the riser there reference is made to the following clauses 5.1.2.17 (external details for plant, exhausts, ducts and other services as part of the overall building structure), 4.1.4.1 (Street Front Setbacks), 4.1.4 Setbacks and Building Separation and 3.9.3 Noise from Mechanical Plant.

- **Concerns regarding excavation, request for new dilapidation report relating to this excavation, and request for further conditions to ensure compliance with previous conditions (DA31, DA40, DA48). Request for a preliminary engineer and survey report prior to commencement as well as a further independent report if the preliminary report**

shows excavation will extend beyond existing footings (as referenced under conditions DA40).

- **Request nothing is to circumvent D31 which requires no works to encroach the boundary**
- **Traffic flows have changed since the development was originally approved**

The matters raised within the submissions are addressed as follows:

- **Impact on privacy caused by the angle of the façade**

Comment:

As a result of the physical separation, with the road as a buffer, between the subject site and dwellings opposite on 'The Crescent,' the setback to the dwelling is reasonable to ensure privacy impact is minimised without any further screening.

- **A carpark exhaust vent and riser are situated on The Crescent boundary. With regard to the riser there reference is made to the following clauses 5.1.2.17 (external details for plant, exhausts, ducts and other services as part of the overall building structure), 4.1.4.1 (Street Front Setbacks), 4.1.4 Setbacks and Building Separation and 3.9.3 Noise from Mechanical Plant**

Comment:

A condition has been imposed to ensure the exhaust is minimised in bulk and scale to a reasonable extent.

- **Concerns regarding excavation, request for new dilapidation report relating to this excavation, and request for further conditions to ensure compliance with previous conditions (DA31, DA40, DA48). Request for a preliminary engineer and survey report prior to commencement as well as a further independent report if the preliminary report shows excavation will extend beyond existing footings (as referenced under conditions DA40)**

Comment:

The existing condition requiring a dilapidation report is maintained. A further condition has been imposed to require a report from a suitably qualified engineer to provide recommendations which will ensure there is not unreasonable risk to neighbouring properties.

- **Request nothing is to circumvent D31 which requires no works to encroach the boundary**

Comment:

This condition remains.

- **Traffic flows have changed since the development was originally approved**

Comment:

Despite any changes to traffic, the car parking situation including number of spaces is approved. The minor changes including 'realignment of parking space 3 and deletion of turntable' would have no unreasonable impact on traffic.

Re-notification and Later Submissions

The proposal was re-notified for 14 days between 5 February and 19 February due to an error in the description of the development in the notification letter. One (1) additional submission has been received. However, the notification letter specified that the closing date for submissions was on 21 February 2019. As such, any submissions received before this closing date and after the time of writing this report will be considered in an addendum to this report.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the modification proposal is acceptable subject to the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 315056M_06).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	40	30

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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	Approved	Proposed	% Variation	Complies
Height of Buildings:	11m	11.4m	10.6m	N/A	Yes
Floor Space Ratio Site area: 459.4m ²	FSR: 0.75:1	FSR: 1.369:1 (630m ²)	FSR: 1.369:1 (629m ²)	N/A	No (however less than originally approved FSR)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

4.4 Floor space ratio

Whilst the modification application will result in a Floor Space Ratio that exceeds the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment of the variation is as follows:

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor Space Ratio’ of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character

Comment:

The proposal provides for slightly less overall floor space than approved under the previous modification. This includes the addition of floor space at some parts of the approved envelope and reduction at other parts. Specifically, there is a change in location of the floor space at 'Level 2' which has come as a result of a change in alignment of the building at the southern elevation. Along with this, there are other minor changes to at the side setback, with some parts of the building having an increased side setback and other areas having a decreased side setback. Overall, this will provide a bulk and scale that is similar to the approved and desirable in the streetscape (given the modulation at each level).

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

Comment:

The proposed modifications would not have any unreasonable impact on views and the change in design to the top level maintains view corridors to the side and over the top of the proposed Residential

flat building.

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

Comment:

The modified design provides a building height that is lower than the approved height, maintains modulation in the side setbacks and maintains similar front and rear setbacks. This has the effect of providing a building form that will maintain appropriateness as compared to the other the other development in the area and provides modulation that is desirable for current development.

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

Comment:

The compliant building height and compliant setbacks to the top level provide a situation in which the proposal would provide an openness and separation from neighbouring properties which would appropriately minimise amenity impact.

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

Comment:

Not applicable.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 zone.

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

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

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

In this circumstance, providing flexibility to the floor space ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the

street context.

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

Comment:

It is appropriate to allow flexibility in this circumstance as an addition of floor space can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 459.4m²	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per	3 dwellings	3 dwellings	No (as approved)
4.1.2.1 Wall Height	North: 10.5m	8.4m	10.1m	Yes
	South: 10.5m	8.6m	10.3m	Yes
4.1.2.2 Number of Storeys	3	3	3	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.5m	0.6m	Yes.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m to basement and ground 2.12m to first floor balcony 3.7m to second floor 5m to third floor	0m (to basement and ground) 2.48m (to first floor balcony) 3.5m (to second floor) 4.5m to third floor	No (see comments)
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 2.5m (Level 2) Note: Other setbacks are equal to or greater than approved.	0.2m-2.6m	1.5m	No (see comments)
4.1.4.4 Rear Setbacks	8m	7.3m to basement 7.2m to ground 0m to first floor stairs and landscaping	7.3m to basement 7.2m to ground 0m to first floor stairs and landscaping	No [for part of second floor balcony (see comments)] Yes for third floor

		7m to second floor	5.8m-7.5m to second floor 12.7m to third floor	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (230m ²)	66.8% (307.6m ²)	66.7% 305m ²	Yes
	Open space above ground 40% of total open space	55% (169.6m ²)	57% (175.6m ²)	No (see comments)
4.1.5.2 Landscaped Area	Landscaped area 30% of open space	13% (40m ²)	20% (60m ²)	No (but greater than approved)
4.1.5.3 Private Open Space	18m / 12sqm per dwelling	20-71m ² per dwelling	60m per dwelling (average)	Yes
Schedule 3 Parking and Access	6 spaces (including 1 visitor)	8 spaces (including 1 visitor)	8 spaces (including 1 visitor)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	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)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	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

3.1 Streetscapes and Townscapes

Issue

The proposal involves modifications to an approved residential flat building. This includes changes, particularly to the top level of the building, that will have implications in the the building presents within the streetscape.

By way of comparison, the proposed residential flat building has a top level with a flat roof whereas the approved building has a curved roof. The proposed form also has a lower ridge height, further setback to Commonwealth Parade and a closer setback to The Crescent.

Merit consideration:

With regard to the consideration of the issue, the development is considered against the underlying Objectives of the Clause as follows:

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

Comment:

The proposed car parking is to remain as approved with the exception of the realignment of a parking space and the deletion of a turntable. Additionally, the proposed and existing retaining walls and walls are setback from the street and integrated with landscaping so as to appropriately minimise the presentation of bulk and scale associated with the overall building.

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

Comment:

The proposed building is compliant with the requirement for building height under the Manly LEP and provides modulation including greater setbacks for higher levels of the building. The existing streetscape is characterised predominantly by buildings with a greater height, bulk and scale than the proposed building. In particular, the neighbouring building at 7 Commonwealth Parade is significantly larger than the proposed dwelling. Conversely, the building adjacent to the north, 1-3 the Crescent, is smaller than the proposed development and the predominant form in the streetscape. As such, the proposed building which is compliant with the development standard for building height and well

modulated (through setbacks), provides a balanced outcome for the immediate vicinity as well as an appropriate outcome for the broader Streetscape.

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

Comment:

The proposal provides planter boxes and landscaping to be integrated with the retaining walls and built form on site. along with reasonable setbacks, this provides a situation in which the visual outcome for the site is appropriate.

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.

3.4.2 Privacy and Security

Description of issue

The proposed modifications involve changes in location and size of balcony areas and changes to windows. As a result, the impacts on privacy are different to that of the original approval and most recent approval.

Merit consideration:

With regard to the consideration of the issue, the development is considered against the underlying Objectives of the Clause as follows:

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

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

Comment:

The proposal involves balconies (and a terrace) at the front and rear of the development, and a balcony to the east at the ground floor. The proposal also involves windows at each elevation.

In regard to the windows, the physical separation between adjoining living spaces, the location and minimised design, ensure that there would be no unreasonable opportunity for direct overlooking between properties.

The balconies are orientated toward the streets, have reasonable side setbacks and provide privacy screens to the side elevations to adequately minimise potential privacy impact (acoustical and visual).

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

Comment:

Privacy Screens are provided to the side elevations of the balconies but as a result of the physical separation of these areas from neighbouring living areas, there would be no unreasonable amenity impact caused by this screening. As a result, there is an appropriate balance provided between privacy and other amenity.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides balconies and entrances at the front and rear elevation which provide appropriate opportunity for awareness of neighbourhood security.

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

The streetscape of Commonwealth Parade has a variable building line and the proposal does not comply with the 6.0m numerical control which applies in this case.

The proposal does not comply with the control for side setback at Level 2 at the southern elevation (2.5m is required). The proposal provides a continuous wall which is 1.5m from the boundary. It is noted that the approved wall had a varied setback of 0.2m to 2.6m.

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 proposal involves a building which is well modulated with the top level being setback from the sides and street front so as to minimise visual prominence. Along with the compliant building height, this provides an outcome in which the proposed residential flat building has a bulk that will present in a way which is consistent with the desired character of the street. Additionally, the landscaping provided in the form of planter boxes to the outdoor open space provides an adequate integration of landscaping with built form which provides a well balanced presentation.

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:

The proposed residential flat building provides reasonable modulation and a compliant building height so as to provide adequate spacing and a minimisation of bulk to maintain adequate amenity. This involves providing a significant open corridor on either side of the top level of the development as well as a built form which does not extend vertically so as to provide any unreasonable amenity impact.

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

Comment:

The proposal addresses both street frontages and each level is in part stepped back from the lower level. Given the context of the site (with two street frontages) and area (with buildings of varied bulk and building line) as well as the reasonable visual presentation and lack of amenity impact, the proposed siting of the building is appropriate.

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 proposal provides planter boxes to each balcony and planting surrounds the terrace. This provides a situation in which are provided across many parts of the site. Furthermore, the total landscaping is improved as compared to the existing approval. This provides an appropriate outcome for natural features on site.

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

Comment:

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

Description of non-compliance

The proposal does not comply with the control for total open space above ground (40% required). The proposal involves 57% or 175.6m² of total open space which is 6m² greater than the approved amount.

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 augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal provides a greater amount of landscaped area than approved and this provides a reasonable outcome for the site.

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

Comment:

Although the proposal involves a total open space above ground which does not comply with the control, each of the areas which are provided above ground provide additional landscaping in the form of planter boxes. As a result, landscaping is reasonably maximised given the existing situation and area (dominated by built form).

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

Comment:

Despite the non-compliance with the control for total open space above ground, the proposal provides a design for the balconies which includes privacy screens and orientation away from neighbouring living space to minimise amenity impact.

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

Comment:

The planter boxes above ground will ensure that water infiltration on site is maximised.

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

Comment:

The proposal does not propose any noxious weeds.

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

Comment:

The reasonable setbacks maximise opportunity for wildlife corridors.

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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Manly Section 94 Development Contributions Plan

As required by original conditions.

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 2000;
- 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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0575 for Modification of Development Consent DA436/2008 relating to a residential flat building on land at Lot CP SP 11874,5 Commonwealth Parade, MANLY, subject to the conditions printed below:

A. Add Condition No.1C - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A0.02 Excavation and Fill Plan	2018.10.08	platform architects
A1.01 Basement Plan	2018.10.08	platform architects
A1.01 Ground Floor Plan	2018.10.08	platform architects
A1.02 Level 1 Plan	2018.10.08	platform architects
A1.03 Level 2 Plan	2018.10.08	platform architects
A1.04 Level 3 Plan	2018.10.08	platform architects
A1.05 Roof Plan	2018.10.08	platform architects
A2.01 East Elevation	2018.10.08	platform architects
A2.02 North Elevation	2018.10.08	platform architects
A2.03 West Elevation	2018.10.08	platform architects
A2.04 South Elevation	2018.10.08	platform architects
A3.01 Section AA	2018.10.08	platform architects
A3.02 Section BB	2018.10.08	platform architects
A3.03 Section CC	2018.10.08	platform architects
A3.04 Section DD	2018.10.08	platform architects
A5.01 Driveway Plan	2018.10.08	platform architects
A5.02 Driveway Sections	2018.10.08	platform architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report to Cecil Koutsos on Geotechnical Investigation for Proposed Residential Development	2 October 2009	Jeffrey and Katauskas Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
L.SK.01 Landscape Sketch Plan	16.10.18	platform architects
L.SK.02 Landscape Sketch Plan	16.10.18	platform architects
L.SK.03 Landscape Planting Plan	16.10.18	platform architects
L.SK.04 Planting Character	16.10.18	platform architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition ANS17- On slab planter works and planting to read as follows:

Details shall be submitted to the Certifying Authority prior to the Construction Certificate,

- i) indicating the proposed method of waterproofing to concrete slabs and planters to which soil and planting is being provided,
- ii) indicating soil type, plant species, irrigation, services connections, maintenance activity schedule and soil depth compliant with iii) below:
- iii) the following minimum soil depths are required:
 - 300mm for lawn
 - 600mm for shrubs
 - 1 metre for trees
- iv) certification shall be provided by a structural engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

C. Add Condition ANS18- Landscape works to read as follows:

Landscaping shall be is to be implemented in accordance with the landscape sketch plans, drawing numbers L.SK.01 to L.SK.07 inclusive, dated 16.10.2018, as prepared by scape design, and inclusive of the following requirement:

- i) the proposed *Livistona australis* shall be planted with a clear trunk of 3 metres minimum.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved plans and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

D. Add Condition ANS19- Landscape Maintenance to read as follows:

All landscape components are to be maintained for the life of the development.

A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme and be generally in accordance with the Plans.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

E. Add Condition ANS20- Environmental and priority weed control to read as follows:

All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: Preservation of environmental amenity.

F. Add Condition ANS21- Engineering and Excavation details to read as follows:

A suitably qualified engineer is to provide a report with recommendations for works and confirmation of work details that will not cause unreasonable risk to the neighbouring properties. The development is to comply with the recommendations provided within this report.

Reason: To minimise risk caused by excavation.