

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0577
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 1288013, 21 Whistler Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2018/1669 granted for Demolition works and construction of a shop top housing development including strata subdivision
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Pavilion Residences (No.3) Pty Ltd
Applicant:	Urban Partners

Application Lodged:	07/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	14/11/2022 to 28/11/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 9.36%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.56 of the EP&A Act seeks to modify the built form approved under development consent DA2018/1669.

Specifically the works incorporate the following:

Basement

- Relocate turntable
- Relocate stair entry door
- Internal alterations
- Relocate Garbage Room to Ground Level in consultation with council waste management department
- Relocate and reconfigure bike racks

Ground

- Relocate commercial garbage bins in consultation with waste management
- Internal alterations
- Relocate carpark and kitchen exhaust

Level 1

- Modify external doors and walls between courtyards and foyer
- Modify entry/laundry area in apartment 101 and 102
- Install glass louvres to existing western foyer opening

Level 2

- Combine and reconfigure two units into one 3-bedroom unit
- Relocate carpark and kitchen exhaust
- Extend foyer, add fire rated spandrels and glass louvres
- New fire rated spandrel to western balconies
- Install glass louvres to existing western foyer opening

Level 3

- Modify entry/laundry area in apartment 301 and 302
- Install glass louvres to existing western foyer opening
- New fire rated spandrel to western balconies
- Extend foyer, add fire rated spandrels and glass louvres

Level 4

- Modify entry/laundry area in apartment 401 and 402
- Install glass louvres to existing western foyer opening
- New fire rated spandrel to western balconies
- Extend foyer, add fire rated spandrels and glass louvres

Other

- Minor external alterations
- Modify roof and parapet wall to accommodate for modified and relocated ductwork

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 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
Manly Local Environmental Plan 2013 - 4.3 Height of buildings

SITE DESCRIPTION

Property Description:	Lot 1 DP 1288013 , 21 Whistler Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Whistler Street.</p> <p>The site is regular in shape with a frontage of 17.75m along Whistler Street and a depth of 15.8m. The site has an area of 278m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a one and two storey residential development.</p> <p>The site is generally flat and does not contain any significant landscape features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is predominantly characterised by two to four storey storey shop top housing developments and four to six storey residential flat buildings.</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:

DA2018/1669 - Demolition and construction of a five storey shop top housing development comprising a ground floor retail premises and 8 residential apartments. (Approved by LEC on 22 July 2020)

The original application was recommended for refusal by Council and determined by way of Refusal by the NBLPP on 16 October 2019. The primary reason for refusal was due to the heritage significance of the site.

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;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1669, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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	<p>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 DA2018/1669.</p> <ul style="list-style-type: none"> • The modified development remains consistent with the original approval in terms of use and density of development. • The proposed is maintained within the footprint of the original consent. • The bulk and scale of the development remain largely the same and the visually is not significantly altered from the original approval when viewed from the street and adjoining properties.
(b) 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, and the Northern Beaches Community Participation Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2018/1669.
(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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in

determining an modification application made under Section 4.56 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
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	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 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>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</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 matter has been addressed via a condition in the original consent/</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) 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) The proposed development will not have a detrimental social impact in the locality considering the</p>

Section 4.15 'Matters for Consideration'	Comments
	character of the proposal. (iii) 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 from 14/11/2022 to 28/11/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to 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. 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.
NECC (Development Engineering)	The proposal the reconfigure the basement carparking and vehicle entry lift has little impact on the original stormwater management plan prepared by Burgess Arnott Grava engineers. No objections to the proposed modifications , nil conditions required.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral

Internal Referral Body	Comments		
	<p>This application has been referred to Heritage as it is within the vicinity of a heritage item, being Item I255 Electricity substation No 15009 at Whistler Street (corner Raglan Street), Manly, which is listed in Schedule 5 of Manly Local Environmental Plan 2013. This item is also listed as an item of State significance on the State Heritage Register.</p>		
	Details of heritage items affected		
	Item I255 Electricity substation No 15009		
	<u>Statement of Significance</u>		
	<p>The Manly Zone substation is a fine and robust, well detailed face brick purpose designed and built structure. It is an excellent and externally intact representative example of the Interwar Art Deco style. It is considered to be a rare example of this style and of State Significance.</p>		
	<u>Physical Description</u>		
	<p>The Manly Zone substation is a fine and robust, well detailed face brick two storey building built on the street alignment. Stylistic elements of Interwar Art Deco include the extensive use of face brick and brick detailing in the stepped parapet and base of the projecting first floor oriel windows and the use of bold linear motifs. Decorative elements include the use of curved bricks to form unusual framing around windows and doorways. The building incorporates a residential unit titled #15101 RESIDENTIAL UNIT, 34a Whistler Street.</p>		
	<p>The Manly Zone substation is constructed in load-bearing face brick with cement render applied to the plant doorway reveals. Original windows are double hung timber multi pane.</p>		
	<p>Architectural style: Interwar Art Deco</p>		
	<p>Exterior materials: Face brick, Timber Joinery, Steel Roller shutter.</p>		
Other relevant heritage listings			
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		
Australian Heritage Register	No		
NSW State Heritage Register	Yes		
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		
Other	No		
Consideration of Application			
<p>The proposal seeks consent for modifications to the LEC2019/407794 approved consent (DA2018/1669), including</p>			

Internal Referral Body	Comments
	<p>alterations to the basement plan, level 2 plan and the ground floor facade treatment. It is noted that a 25mm increase to the roof parapet is also proposed. The SEE states that the modifications include changes to the finishes at page 1: "Minor modifications have also been made to the façade, finishes, foyer and entry doors at ground level in addition to the car lift." the details of these changes must be provided to ensure that the proposed finishes are compatible with the context.</p> <p>It is noted that the existing structures on the subject site - the original service wing of Roseville Cottage, which was built in the 1880's and fronted what is now Belgrave Street - have been demolished. Heritage require an Interpretation Plan to be prepared and incorporated into the design of the new development to ensure that the historical and cultural significance of the site is recognised and interpreted as part of the new development of the site.</p> <p>Given the proposed modifications are mainly contained within the approved building footprint with a small height increase, it is considered that the proposal will not have an additional impact upon the heritage item across the road and the heritage values of the streetscape.</p> <p>Therefore, no objections are raised on heritage grounds subject to two conditions.</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? No Is a Heritage Impact Statement required? Has a Heritage Impact Statement been provided?</p> <p>Further Comments</p> <p><i>*Note From Planner - The requirement for a Heritage Interpretation Plan is not considered relevant to what is proposed under this modification application. There is not sufficient nexus between what is proposed under this modification to now require a Heritage Interpretation Plan to be prepared for the application. This condition would not pass the 'Newbury Test'. The condition requiring photographic recording of the buildings was required on the additional consent and is maintained on the modified consent.</i></p>
Strategic and Place Planning (Urban Design)	<p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent to modifications that include a 25mm increase to the roof parapet, the relocation of the garage and kitchen exhaust to the western façade of the building and minor modifications to the building facades. These will have minor impact on the street façade which will have little impact on the streetscape or amenity of</p>

Internal Referral Body	Comments
	<p>pedestrians.</p> <p>Urban Design raise no objection to the proposed development.</p>
Traffic Engineer	<p>Proposal description: Alterations and modifications to DA2018/1669</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> Plans (Master Set) – Revision E, Drawing No. S4.56.01, designed by WOLSKI.COPPIN Architect, Project No. 21806, dated 10/10/2022, Statement of Environmental Effects for 4.56 Modification of Development dated 3/11/2022, Traffic Referral Responses to DA2018/1669 (demolition of the site structures and the construction of a 5 storey shop top housing development) dated 11/11/2019 Plans (Master Set) – Revision C, Drawing No. DA01, designed by WOLSKI.COPPIN Architect, Project No. 21806, dated 24/03/2020. <p>It is noted from the SEE that:</p> <ul style="list-style-type: none"> the alterations are to the approved development as a result of changes made during design development in response to engineer advice and purchaser requests. the modifications include minor alterations to the basement, primarily consisting of a relocation of the turntable and modifications to the perimeter wall to structural requirements. minor modifications have also been made to the façade, finishes, foyer and entry doors at ground level in addition to the car lift. on level 2, the two proposed units have been combined and modified into a single, three bedroom unit, and other minor alterations have been made to apartments on the other levels in response to the relocation of the garage and kitchen exhaust. <p>The number of parking spaces has remained unchanged from the previously approved plans. The disabled parking space and the turntable have been relocated to the north of the parking module, and the lift and bike racks have been shifted to the south of the parking area.</p>

Internal Referral Body	Comments
	<p>In the traffic report (for DA2018/1669) and the swept path analysis provided in Appendix C of the report, the B85 vehicle entry/exit movements are shown for travel between the lift and parking spaces. With the relocation of the accessible parking space and the turntable, swept path plots will be conditioned to demonstrate that access to all parking space by the B85 vehicles is possible as required by AS2890.1. The plots should demonstrate that access for a B85 is possible to these space by no more than a 3- point turn (as required by AS2890.1 Table 1.1 for user class 1A).</p> <p>As the offstreet parking supply has been assessed as being adequate to support the residential parking needs of the development a condition will also been added to the effect that the residents of the development will not be eligible for resident parking permits</p>
Waste Officer	<p>Waste Management Assessment Recommendation - Supported, subject to conditions. Existing waste conditions to remain.</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 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

The proposed modification application is for minor built form changes to the approved shop top housing development. The proposed modification is not incorporating an additional storey nor is the development increasing the density the proposal is not considered to be a substantial redevelopment or refurbishment of the existing building. The proposal does not involve the erection of a new building and it is not a conversion of an existing building. Therefore the proposal does not meet any of the provisions under Part 4(1A) of the SEPP, and this policy does not apply.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 963724M_03 dated 7 October 2022).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	35	36

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

SEPP (Biodiversity and Conservation) 2021

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (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	Approved	Proposed	% Variation	Complies
Height of Buildings:	15m	16.38m (Building) 17.2m (Lift overrun)	16.405m (RL22.625)	9.36%	No
Floor Space Ratio	FSR: 3:1 (834sqm)	FSR: 2.8:1 (783sqm)	No change	N/A	N/A
Gross floor area in Zone B2	min 25% Commercial GFA, maximum 1000sqm per premises (203.6sqm)	Commercial GFA: 18.7% Max sqm per premises: 152sqm	No change	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	N/A
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	15m
Proposed:	16.405m
Percentage variation to requirement:	9.36%

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.56 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.56 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 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 4.56 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.56 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R3 Medium Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

The objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard (As detailed below). Demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

The development promotes good design and amenity of the built environment, noting that the airconditioning units will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in

which the development is proposed to be carried out.

4.3 Height of buildings

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

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

Comment:

The height of building non-compliance under this application is in reference to the proposed increase to the parapet height to the top of the approved building. The approved height of the rest of the building is not altered.

b) to control the bulk and scale of buildings,

Comment:

The works will allow for an appropriate relationship and spatial separation with surrounding development. The visual bulk of the increased parapet height as viewed from public open space is not adverse nor unreasonable.

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 will not result in unreasonable view loss to and from private and public open spaces.

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 solar impacts of this aspect of the development are minor and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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 site is not located in recreation of protection zone.

Zone objectives

The underlying objectives of the B2 Local Centre zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposed development retains the use of the site as shop top housing, so includes retail premises at ground level. This supports the needs of the people who live in, work in, and visit the local area.

- To encourage employment opportunities in accessible locations*

Comment:

As above, the proposed development retains retail premises at ground level, which will provide employment opportunities. The subject site is accessible in that it is located within short walking distance of regular bus, ferry services and courtesy bus services.

- To maximise public transport patronage and encourage walking and cycling.*

Comment:

The subject site is located within short walking distance of bus and ferry services, as well as walking and cycling paths.

- To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

Not applicable. The subject site does not adjoin any other residential zone.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment:

The subject application is made under Section 4.56 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Mainly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
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4.2.3 Setbacks in LEP Zones B1 and B2	Nil	Nil	No change	N/A
Schedule 3 Parking and Access	In Manly Town Centre Business Zone (LEP Zone B2- Local Centre) 0.6 resident parking space for each Studio or one bedroom dwelling, plus 1 resident parking space for each 2 bedroom dwelling, plus 2 resident parking spaces for each 3 or more bedroom dwelling, and plus 0.16 visitor parking space for each dwelling (irrespective of number of bedrooms). 8 residential 2 visitor	13 residential Nil visitor	No change	N/A
	1 per 40sqm Commercial 4 Commercial	Nil	No change	

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.1 Landscaping Design	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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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

Section 7.12 contributions were levied on the Development Application.

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, 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. Mod2022/0577 for Modification of Development Consent DA2018/1669 granted for Demolition works and construction of a shop top housing development including strata subdivision on land at Lot 1 DP 1288013,21 Whistler Street, MANLY, subject to the conditions printed below:

A. Add Condition No.1A - 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) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S4.56 01/ Revision E	10/10/2022	Urban Partners
S4.56 02/ Revision E	10/10/2022	Urban Partners
S4.56 03/ Revision D	10/10/2022	Urban Partners
S4.56 04/ Revision D	10/10/2022	Urban Partners
S4.56 05/ RevisionD	10/10/2022	Urban Partners
S4.56 06/ Revision D	10/10/2022	Urban Partners
S4.56 07/ Revision D	10/10/2022	Urban Partners
S4.56 08/ Revision V	10/10/2022	Urban Partners
S4.56 09/ Revision B	10/10/2022	Urban Partners
S4.56 10/ Revision C	10/10/2022	Urban Partners
S4.56 11/ Revision C	10/10/2022	Urban Partners
S4.56 12/ Revision C	10/10/2022	Urban Partners
S4.56 13/ Revision C	10/10/2022	Urban Partners

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Compliance - BCA Access Compliance	18 October 2022	Howard Moutrie
BASIX Certificate No. 963724M_03	7 October 2022	Senica Consultancy Group

B) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

B. Add Condition 21A - Building Code of Australia Fire Safety Requirements - to read as follows:

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the revised BCA Design Compliance Report prepared by Private Certifiers Australia, dated 26/10/2022, is to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

C. Add Condition 21B - Access and Facilities for Persons with Disabilities - to read as follows:

Access and facilities to and within the building are to be provided for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the recommendations contained in the Revised Statement of Compliance prepared by Accessible Building Solutions dated 25/10/200 are to be included as part of the Construction Certificate assessment. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

D. Add Condition 21C - External finishes and colour scheme - to read as follows:

Details of the modifications to the finishes and colours are to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To ensure that the external finishes and colour scheme are appropriate for the heritage context.

D. Add Condition 21D - Vehicular Swept Paths - to read as follows:

Vehicular manoeuvring swept paths shall be provided to demonstrate that access to all parking space by the B85 vehicle is possible in accordance with the requirements of AS/NZS 2890.1. The plots should demonstrate that access to each space is feasible by no more than a 3-point turn (as required by AS2890.1 Table 1.1 for user class 1A).

Details demonstrating compliance with this condition must be submitted to the Certifier prior to the issue

of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

E. Add Condition 51A - Resident Parking permits - to read as follows:

Any residents and/or tenants of the subject site are not eligible for resident parking permits. This condition is to be provided on the property Title

Reason: To ensure the tenants are aware that they are not entitled to a permit regardless if they are within a Resident Parking Scheme (RPS).

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Maxwell Duncan, Principal Planner

The application is determined on 22/03/2023, under the delegated authority of:



Jordan Davies, Acting Development Assessment Manager