

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0731
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<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 2 DP 565073, 149 A Seaforth Crescent SEAFORTH NSW 2092
<b>Proposed Development:</b>	Modification of Development Consent DA2018/0832 granted for Construction of a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned C3 Environmental Management
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Frederic Leforestier Lydie Marie Germaine Leforestier
<b>Applicant:</b>	Tone Wheeler

<b>Application Lodged:</b>	02/02/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	08/02/2023 to 22/02/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent DA2021/1329.

The modifications proposed include:

#### LEVEL 4

- 1. Design + layout of Stairs+ Lift amended
- Deck added to Study + Salon; Deck removed from Bed 1
- Position of Bathroom + WC moved southward

### **LEVEL 3**

- Design + layout of Stairs+ Lift amended
- Kitchen / Dining areas slightly wider + reconfigured.
- WC moved to Entry

### **LEVEL 2**

- Design + layout of Stairs+ Lift amended
- Overall floor plan reduced in area - rooms reduced in size
- Deck reduced in depth
- Storage relocated from Stair area to Hallway

### **LEVEL 1**

- Design + layout of Stairs+ Lift amended
- North-western building line pushed back 1.2m
- Floor plan reconfigured
- Stairs to Pool Area internalised (i.e. under main stairs)

### **LEVEL 0 – POOL AREA**

- Pool moved approximately 650mm southwest
- Pool gate swing in direction of travel
- Pool House: Plant equipment located under Pool area; Bathroom deleted.

### **ROOF PLAN**

- Extent of roof changed to reflect floor plan changes
- Roof plan simplified; single 6 degree slope
- Pool house roof – single 2 degree slope

### **ELEVATIONS + SECTIONS**

- Overall building lowered in height by 300mm; pool deck lowered by 730mm
- Overall bulk of building slightly reduced
- New window configurations
- Glass + metal balustrades to balconies + walkway

### **GARAGE**

- Roof extended over deck area; 1 degree roof pitch
- New storage level added under garage
- New internal stairs included for access to new level below and to natural ground level below (via external stairs).

The proposed application has incorporated condition 22 (roof) imposed by the Development Determination Panel as part of DA2018/0832 into the proposed modification plans. The application has applied for this condition to be deleted, noting that it has now been incorporated into the modification

plans. The condition is as follows:

## 22. Roof

The proposed fourth floor roof pitch with a maximum height of RL35.50 is to be reversed with a maximum 6 degree slope maintaining a maximum height of RL35.50.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce the bulk and scale of the dwelling house.

## 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 - 4.3 Height of buildings

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

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 565073 , 149 A Seaforth Crescent SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Seaforth Crescent.</p> <p>The site is irregular in shape with a frontage of 7.16m along Seaforth and a average depth of 86mm. The site has a surveyed area of 1141m<sup>2</sup>.</p>

The site is located within the E3 Environmental Management zone and accommodates vehicular access via an existing driveway from Seaforth Crescent to an existing hardstand car space to the front of the property.

The surrounding area includes the harbour foreshore and in particular, Peach Tree Bay. The properties in the area are characterised by multi-storey dwellings on a hillside which slopes steeply down to the Middle harbour foreshore area. On the harbour side of Seaforth Crescent the area has a variety of garages to the front of the allotments and at street level.

The site is currently vacant.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by multi-storey dwellings.

Map:



## **SITE HISTORY**

A search of Council's records has revealed the following relevant history:

- DA2018.0832 - Construction of a dwelling house was **Approved** by DDP on 5 October 2018.
- **DA2017/1339** Construction of a new dwelling house was **Withdrawn** by the applicant on 13/02/2018.
- **DA35/2003- Part 2** New Building Dwelling was on **Approved** on 10/12/2003.
- **DA35/2003-** New Building Dwelling was on **Approved** on 19/06/2003.

## 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 DA2018/0832, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The amendments proposed are minor in scale, and will not result in any difference as viewed from adjoining properties. The proposed modifications will not result in any discernible increased amenity impact to adjoining properties or the streetscape.</p>
(b) 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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2018/0832 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The approved use of the site will remain unchanged.</li> <li>• From both a qualitative and quantitative perspective (which includes (but is not limited to) building height, setbacks, landscaped area, etc.) the proposed</li> </ul>



Section 4.55(1A) - Other Modifications	Comments
	<p>modifications will not substantially alter the development from what was previously approved.</p> <ul style="list-style-type: none"> <li>The proposal will have no additional impact on surrounding sites nor the public domain.</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>
<p>(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.</p>	<p>See discussion on "Notification &amp; Submissions Received" in this report.</p>

### 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 4.55 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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## 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 08/02/2023 to 22/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Alan David Masterton	74 Seaforth Crescent SEAFORTH NSW 2092

The following issues were raised in the submissions:

- **Height of the proposed garage**

The above issues are addressed as follows:

- **Height of the proposed garage**

The submissions raised concerns that amended garage design will have an adverse impact on both public and private views (No.74 Seaforth Crescent, Seaforth).

### Comment:

The proposed amended garage has a maximum height of RL59.40. The height of the garage is compliant with clause 4.3A (Special Height Provisions) of the Manly Local Environmental Plan 2013 (MLEP).

The height of the garage is reduced by way sloping of the roof down to the northern side. The submission notes that the extension will create an increased loss of water view. It is noted however that the height of the inclinator itself which is proposed to the most northern side of the garage remains unchanged and as such, there will no discernible increase to the loss of view. The extension of the garage roof over the approved deck to the north of the garage will not have an unreasonable impact upon views from either private or public open space.

## REFERRALS

Internal Referral Body	Comments



Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against Manly LEP 2013 Clause 6.5 (Terrestrial Biodiversity).</p> <p>The proposed modification will not result in a significant increase in impact to the existing biodiversity values, and therefore comply with the relevant planning controls.</p>
NECC (Coast and Catchments)	<p><b>SUPPORTED WITH CONDITIONS</b></p> <p>This modification application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>• State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021; and</li> <li>• Manly LEP 2013 and Manly DCP 2013.</li> </ul> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this modification application. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). However, as the site is located in the Sydney Harbour Catchment Area, only Division 5 of SEPP R &amp; H applies to this modification application. As the proposed development is largely within the envelope of the existing development, it is not likely to cause increased risk of coastal hazards on that land or other land. Consequently, the modification proposal is considered to satisfy the relevant requirements of SEPP R &amp; H, subject to conditions.</p> <p><b>State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021</b> <b>Harbour Foreshores &amp; Waterways Area</b> As the subject site is located within the Sydney Harbour Catchment, Chapter 6 of State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021 (SEPP B &amp; C) applies to the assessment of this modification application. The subject site is located within the Foreshores and Waterways Area and Part 6.3 of SEPP B &amp; C applies to land that is in or abuts the Foreshores and Waterways Area. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Sutherland &amp; Associates Planning dated 19 December 2022, the proposed modifications do not alter the development's consistency with the planning principles for land within the Foreshores and Waterways Area. As such the modification application is considered to satisfy the relevant requirements of SEPP</p>

Internal Referral Body	Comments
	<p>B &amp; C, subject to conditions.</p> <p><b>Manly LEP 2013 and Manly DCP 2013</b> Foreshores Scenic Protection Area Management The subject site is shown to be “Manly Foreshores Scenic Protection Area” in Council’s Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Sutherland &amp; Associates Planning dated 19 December 2022, the proposed modifications do not cause additional impacts on the visual amenity of the harbour, excessive overshadowing of the harbour or conflicts with water based activities. As such the relevant requirements of the Manly Foreshores Scenic Protection Area in Manly LEP 2013 and Manly DCP 2013 are considered to be satisfied.</p> <p>Limited Development on Foreshore Area The subject site is also shown to be affected by the Foreshore Building Line in Manly LEP 2013. The proposed modification application includes construction of a deck in the Foreshore Area. This aspect of the modification application will need to be assessed by the planning officer.</p>
NECC (Development Engineering)	<p>The modification proposes minor changes to the approved development. The submitted Geotechnical report supports the feasibility of the modification. No objections from a Development Engineering perspective.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal was first referred to Heritage as the subject property adjoined a heritage item:</p> <p><b>Item I1 Harbour Foreshores</b> - Municipal boundary adjacent to the Harbour</p>
	Details of heritage items affected
	<p>Details of the item as contained within the Manly inventory is as follows:</p> <p><u>Statement of Significance</u> Natural landscape type - Aesthetic.</p> <p><u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</p>
	Other relevant heritage listings

Internal Referral Body	Comments
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
	Australian Heritage Register
	NSW State Heritage Register
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	<p><b>Consideration of Application</b></p> <p>The application seeks consent for internal and external modifications to the approved consent - DA2018/0832, including a new storage level below the approved garage. Given the separation between the proposed works and the heritage item, the proposal is considered to not further impact upon the significance of the heritage item.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? No  Is a Heritage Impact Statement required? No  Has a Heritage Impact Statement been provided? No</p> <p><b>Further Comments</b></p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 889944S\_04 dated 1 February 2023).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	51

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

### **SEPP (Transport and Infrastructure) 2021**

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

### **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:	8.5m	11.35m	Conditioned change to roof- 11.1m Rest of works - 6.5m	N/A -	Yes
Special height provisions	RL59.40	RL59.67	RL.59.40	-	Yes
Floor Space Ratio	FSR: 0:40:1 456.4m <sup>2</sup>	FSR: 0:29:1 334m <sup>2</sup>	FSR: 0.33:1 387.5sqm	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.3A Special height provisions	Yes
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
5.7 Development below mean high water mark	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### 4.3 Height of buildings

As noted previously within this report, DA2018/0832 included a condition which reversed pitch of the dwelling house. This resulted in an increased variation to the building height of the dwelling house when measured from existing ground level. Despite the increased variation, no further assessment is required as the height is as a result of Council imposed condition.

#### Manly Development Control Plan

##### Built Form Controls

Built Form Controls - Site Area: 1141m <sup>2</sup>	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	South-west: 8m (based on gradient 1:4 or steeper)	8.9m	Garage - 7.5m House - Not applicable, proposed as conditioned	Yes
	North-east: 8m (based on gradient 1:4 or steeper)	10.4m	Garage - 5.7m House - Not applicable, proposed as conditioned	Yes
4.1.2.3 Roof Height	Height: 2.5m	1m	Garage - 0.2m House - Not applicable, proposed as conditioned	Yes
	Pitch: maximum 35 degrees	10 degrees	House - 6 degrees Garage - 1 degree	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m, consistent with prevailing setback	0m, no change	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.96m (based on south-west wall height)	2.45m	House - 2.735m Cabana - 2.735m	No Yes
	3.46m (based on north-east wall height)	1.2m-2.5m	House - 1.7m	No
4.1.4.4 Rear Setbacks	8m	24m from swimming pool and outbuilding	24.2m from swimming pool and	Yes



			outbuilding	
		34m from dwelling house.	34.5m from dwelling house.	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.4m	3.2m	No
	1m curtilage/1.5m water side/rear setback	4m from northern boundary (closest boundary)	4m no change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No change	Yes

**\*Note:** Wall height changes to level 4 were not considered above as these changes were as a result of the Council imposed conditions (Condition 22) relating to the reversing of the roof pitch. The proposed modification plan show the altered roof to be consistent with that of condition 22.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	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	
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
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	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

#### Detailed Assessment

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

##### Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.96m from the south-western property boundary and 3.46m from the north-eastern property boundary.

The development proposes the following:

**South-western setback - 2.75m**

**North-eastern setback -1.75m**

##### 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 proposed side setback and window setbacks non-compliance proposed under this modification application do not have any discernible impact on the street, street edge or landscape character of the street.

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

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

##### Comment:

The proposed development is not considered to adversely impact privacy to and from the subject site, and surrounding and adjacent sites. The development does not introduce excessive opportunity for overlooking, with the bulk and height of the development considered reasonable in its context.

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

Comment:

Notwithstanding the numerical non-compliances to the side setback requirements, adequate spatial separation on either side of the proposed dwelling at each level ensures that there is flexibility in the siting of the building.

*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:

No significant vegetation is proposed to be removed to facilitate the proposed modifications.

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

Comment:

The subject site is not located in a bush fire zone.

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

#### **4.1.9 Swimming Pools, Spas and Water Features**

Description of non-compliance

Clause 4.1.9 of the Manly DCP requires swimming pools be no higher than 1m above ground level. The proposed swimming pool is proposed 3.2m above ground level, non-compliant with the numeric control.

It is to be noted that the approved swimming pool under DA2018/0832 was 3.4m above ground level.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

*Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.*

Comment:

Despite the numeric non-compliance, there will not be opportunities for overlooking into the adjoining properties to the east or west. Existing condition has been included with this consent limiting the noise of sound producing plant to no more than 5dB(A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

*Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.*

Comment:

The pool is located to the rear of the property. The swimming pool will not be readily visible from the street. The resulting impact on the streetscape is negligible.

*Objective 3) To integrate landscaping.*

Comment:

Landscaping is proposed to the rear and sides of the swimming pool. The proposal will meet the numeric control for landscape open space across the site. The existing and proposed landscape may further offset the visual impact of the swimming pool from surrounding properties

*Objective 4) To become an emergency water resource in bush fire prone areas.*

Comment:

The subject site is not located in a bush fire asset protection zone, however the pool may be a viable water resource during bushfire emergencies.

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

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. Mod2022/0731 for Modification of Development Consent DA2018/0832 granted for Construction of a dwelling house on land at Lot 2 DP 565073, 149 A Seaforth Crescent, SEAFORTH, 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
030/ Issue 3	31 January 2023	Environa Studio

031/ Issue 4	31 January 2023	Environa Studio
032/ Issue 4	31 January 2023	Environa Studio
033/ Issue 4	31 January 2023	Environa Studio
101/ Issue 4	31 January 2023	Environa Studio
102/ Issue 3	31 January 2023	Environa Studio
103/ Issue 3	31 January 2023	Environa Studio
104/ Issue 3	31 January 2023	Environa Studio
105/ Issue 3	31 January 2023	Environa Studio
110/ Issue 3	31 January 2023	Environa Studio
121/ Issue 3	31 January 2023	Environa Studio
122/ Issue 4	31 January 2023	Environa Studio
131/ Issue 4	31 January 2023	Environa Studio
132/ Issue 4	31 January 2023	Environa Studio
133/ Issue 4	31 January 2023	Environa Studio
134/ Issue 4	31 January 2023	Environa Studio
140/ Issue 3	31 January 2023	Environa Studio
141/ Issue 3	31 January 2023	Environa Studio
142/ Issue 3	31 January 2023	Environa Studio
143/ Issue 3	31 January 2023	Environa Studio

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. 889944S_04	1 February 2023	Efficient Living

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

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

**B. Delete Condition 22 - Roof - to be deleted.**

**C. Add Condition 24A - Estuarine Hazard Design Requirements - to read as follows:**

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

Reason: To minimise potential risks associated with coastal hazards for development in an estuarine environment.

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 06/04/2023, under the delegated authority of:



**Jordan Davies, Acting Development Assessment Manager**