

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0053
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 1 DP 172127, 52 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2019/0509 granted for demolition works, subdivision of one lot into two and construction of two semi-detached dwellings
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Constantine Tziomakis Chris Tziomakis Maria Tziomakis David John Allen A.C.N. 622 672 851 Pty Ltd
Applicant:	Platform Architects Pty Ltd

Application Lodged:	18/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/03/2021 to 15/03/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for the following amendments:

- Enclosure of the entry level undercroft area to create a sealed room to facilitate the proper and efficient operation of the CMV system and HRV unit and the provision of an associated passive air inlet and outlet to the east and west elevations
- Upgraded wall, door, window and lift structures to create a fully sealed air system throughout the dwelling
- Provision of a bathroom at entry level for each dwelling

- Modification to the detailing of the front dividing wall between dwellings
- Modification to external wall finishes (concrete look rendering)

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 - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.5.7 Building Construction and Design
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

SITE DESCRIPTION

Property Description:	Lot 1 DP 172127 , 52 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Lauderdale Avenue, Fairlight. The site is located within the R1 General Residential zone as mapped within the Manly Local Environmental Plan 2013.</p> <p>The site is irregular in shape with a site area of 531m². The subject site has a frontage of 20m along Lauderdale Avenue and an average depth of 35m.</p> <p>The property slopes approximately 16.5m from north to south with vehicle access from Lauderdale Avenue.</p> <p>The site is currently under construction and will contain two</p>

semi-detached residential dwelling house, with swimming pools.

The adjacent property to the east, at 50 Lauderdale Avenue, is developed with two-storey detached dwelling. The adjacent property to the west, at 54 Lauderdale Avenue, is developed with a five-storey dual occupancy.

Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings.

Map:



SITE HISTORY

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

- Development Application **DA2019/0509** for the demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses was approved on the 9 October 2019.
- Application **Mod2019/0584** for the modification of development consent **DA2019/0509** granted for the demolition works subdivision of one lot into two and construction of two semidetached dwellings was approved on the 10 January 2020.
- Application **Mod2019/0585** for the modification of development consent **DA2019/0509** granted for the demolition works subdivision of one lot into two and construction of two semidetached dwellings was approved on the 14 January 2020.
- Pre-lodgement Meeting **PLM2019/0012** was held on the 14 February 2019. Council met with applicant to discuss the preliminary proposal for demolition works, and Subdivision and construction of two semi-detached dwelling houses. Council raised in fundamental objection to this proposal subject to built form modifications and amenity concerns in regards to views.
- Development Application **311/2016** for the demolition and construction of a dual-occupancy was approved by Council on the 20 April 2017.

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 DA2019/0509, 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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	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 DA2019/0509 for the following reasons: The modifications do not change the building envelope, streetscape appearance, car parking, drainage or landscape outcomes. As there are no change to the built form controls, or change in the amenity of the occupants or surrounding sites, the spatial relationship of the proposed works to adjoining properties is maintained with a complimentary and compatible streetscape presentation.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.

Section 4.55(1A) - Other Modifications	Comments
(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	
(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 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)	<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. <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.

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

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 01/03/2021 to 15/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Ms Chelsea Bonner	Po Box 504 MANLY NSW 1655
Mr Tomislav Ristoski Mrs Jeannette Margaret Ristoski	50 Lauderdale Avenue FAIRLIGHT NSW 2094

The following issues were raised in the submissions and each have been addressed below:

- ***Floor Space Ratio***
- ***Amenity impact from vent location***
- ***Landscape area***

The matters raised within the submissions are addressed as follows:

- ***Concern is raised in regards to the Floor Space Ratio non-compliance as a result of enclosing the undercroft area.***

Comment:

The height, bulk and scale of the approved dwelling houses is consistent with what was previously approved under DA2019/1303. There are no amendments to be undertaken to the previously approved setbacks, or landscape open space area. As a result, the built form characteristics are considered consistent with the adjoining development and development generally within the site's visual catchment.

The enclosure of the approved undercroft areas is not visually identifiable, nor contributes to an unreasonable bulk and scale than what was previously approved.

The bulk and scale of the approved dwellings remain consistent with the bulk and scale of surrounding development.

Therefore, the issue does not warrant refusal of the modification application.

- ***Concern was raised in regards to the amenity impacts that could arise from the pipe located on the eastern elevation, within close proximity to the bedroom of the eastern neighbouring site.***

Comment:

In considering and addressing the above matters the applicant has provided additional information in relation to the use of the pipe outlet. This pipe was confirmed to be a passive air intake pipe only. As a result, it can be confirmed that this pipe is not a outlet pipe that will permit the release of air towards the eastern neighbouring dwelling house.

This information was provided to the objector who had no further concerns with the pipe being a intake pipe only.

Noise from the Controlled Mechanical Ventilation (CMV) system with Heat Recovery Unit (HRV) is addressed by conditions to ensure no unreasonable nuisance noise levels from plant / motors.

This issue has been considered under the MDCP and does not have determining weight to warrant refusal of the application.

- ***Concern has been raised as to the soft landscaping provision on the subject site.***

Comment:

There is no amendment to be made to the previously approved soft landscape areas on the subject site. As a result, the conditions imposed by Council's Landscape Architect and recommendation proposed within the arboricultural report continue to be applicable, with the landscaping and vegetation across both dwelling houses to be consistent with the approved Landscape Plan (Landscape Site Plan/ Landscape Calculations & Landscape Planting Plan by Paul Scrivener dated the 30 April 2019).

Therefore, the issue does not warrant refusal of the modification application.

REFERRALS

No referrals were sent in relation to this application

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.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
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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	9.5m	-	-	-
Floor Space Ratio	Lot 1 site area 281.3sqm FSR: 0.6:1 - 168.78sqm Lot 2 site area 251.7sqm FSR: 0.6:1 - 151.08sqm	Lot 1: 166sqm GFA FSR - 0.59:1 Lot 2: 166sqm FSR - 0.66:1	Lot 1: 187sqm GFA FSR - 0.66:1 Lot 2: 188sqm GFA FSR - 0.74:1	18.22sqm or 10.7% 36.92sqm or 24.4%	No No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	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 further exceeds the maximum permitted by Clause 4.4 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 to a development application, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation has been

undertaken below:

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 proposed building on the site area no longer complies with the FSR control of 0.6:1. The increased FSR is now 0.66:1 (10.7% variation) for Lot 1 and 0.74:1 (24.4% variation) for Lot 2. The increase in FSR is a direct result of the new enclosing of the undercroft area within the footprint of the approved dwelling houses.

The proposal maintains side setbacks as well as appropriate modulation of building bulk through separated building form across the site. The additional floor space relates to the previously approved open undercroft areas that will now be enclosed and a bathroom laundry at the undercroft floor level, upslope from the street.

The spatial distance, and elevation will ensure the additional area of building footprint is not visually prominent and is consistent with the approved built form context, the area and the surrounding Manly locality.

As a result, the modifications to the undercroft area are considered consistent with the approved development, and not inconsistent with the prevailing bulk and scale surrounding the site or the desired future character of the locality.

The development satisfies this objective.

(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 proposal involves additional floor space at the undercroft floor levels and within the existing approved building footprint.

The changes footprint do not result in any unreasonable additional bulk on the building. The additional footprint will not have adverse amenity impacts on the adjoining particularly as there is no amendment to any setback distance, and no proposed window openings on the side elevations. As a result, the additional FSR is not considered to be overbearing when viewed from adjacent land, and does not create opportunities to overlook adjacent properties.

The additional FSR does not involve an increase in bulk or density that could lead to obscuring landscape or townscape features.

The development satisfies this objective.

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

Comment:

The proposal maintains a similar presentation of building bulk and proposed no amendment to the previously approved area of open space and landscaping. As such, the proposal will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

The development satisfies this objective.

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

Comment:

The proposal involves the addition of floor space at ground level and does not involve any associated openings. As a result the proposed areas would not result in any unreasonable impact in terms of the environment or amenity.

The development satisfies this objective.

(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 General Residential 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 in Floor Space Ratio 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.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

Notwithstanding, Council is satisfied that the modified development is substantially the same development as previously approved and whilst no assessment against the objectives of Clause 4.6 is required it has been determined that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under MLEP 2013 and the variation can be supported on its merit.

Manly Development Control Plan

Built Form Controls

There is no change to the previously approved built form controls for the subject site.

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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.9 Mechanical Plant Equipment	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	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

3.1.1 Streetscape (Residential areas)

The DCP requirements and objectives, pursuant to Clause 3.1.1 Streetscape (Residential area), including sections 3.1.1.1 to 3.1.1.5, are addressed as follows:

Merit Assessment Comments:

The modified amendments continue to be consistent with Complementary Design and Visual Improvement design outcomes including streetscape considerations for setbacks, materials and built form. As outlined in the built form controls table, there is no change in the external walls of the dwellings, continuing consistency with the previous approval, DCP requirements.

The modification changes continue to have the same visual representation to the street and adjacent land.

The proposed building does however include enclosing the formally open undercroft area that will increase the FSR of the proposed dwellings. However, the enclosing of this area will not be discernible than what was previously approved.

In consideration of the Lauderdale Avenue frontage the building continues to presents as the previously approved five (5) level dwelling house, stepping up the steep escarpment. The Lauderdale Avenue streetscape is characterised by significantly sloping natural topography either side of the road in that dwellings on the higher side generally have much higher rear elevation / setting overlooking the street.

As a result, the modified design continues to be consistent with the original assessment that found the variation to the 3 storey control does not create an unreasonable impact on surrounding land and is consistent with the pattern of surrounding development on similar sloping positions.

No issue is raised with respect to clause 3.1.1.5 for the bin storage area as this is concealed from view as part of the basement garage excavation.

Having regard to the above assessment, and objectives of this clause it is concluded that subject to conditions the proposed development is consistent with the 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.

3.5.7 Building Construction and Design

According to the Australian government's Your Home website (www.yourhome.gov.au), 15-25% of heat loss from buildings is caused by air leaking out of the building. Air leakage makes buildings more difficult to heat and so they are less energy efficient. Not only is this situation impact our environment, heating an unsealed building also costs more money to the occupier of the building.

As a result the modification includes the proposal to enhance the environmental sustainability and performance of the approved dwellings through the installation of a Controlled Mechanical Ventilation (CMV) system with Heat Recovery Unit (HRV). As the proposed new buildings will be completely sealed and airtight the HRV system provides ventilation without the loss of heat or humidity. This ultimately saves energy and ultimately helps keep utility costs lower, as well as providing increased amenity for the occupants of the dwelling houses.

As a result the modifications proposed provide greater consistency with the objectives of Clause 3.5.7 Building Construction and Design of the MLEP 2013.

3.9 Mechanical Plant Equipment

The application seeks approval for the installation of a Controlled Mechanical Ventilation (CMV) system with Heat Recovery Unit (HRV) to both dwellings. The system is so to enhance the environmental sustainability and performance of the approved dwellings.

Concern was raised from the eastern adjoining neighbour in regards to the location of the pipe openings of the proposed system due to the proximity to the window of the existing bedroom.

After discussion with the application information was provided to establish the proposed openings on the side setback are passive air intake pipes, not outlet pipes. As a result, there will be no amenity impacts from the intake pipe. A condition will also be imposed to ensure the noise from the Controlled Mechanical Ventilation (CMV) system with Heat Recovery Unit (HRV) shall comply with the applicable Australian standard in relation to noise attenuation.

As a result the modifications proposed provide consistency with the objectives of Clause 3.9 Mechanical Plant Equipment of the MLEP 2013.

4.1.3 Floor Space Ratio (FSR)

Floor space requirements requirements and objectives, pursuant to Clause 4.1.3 Floor Space Ratio, are addressed as follows for the modification:

Merit Assessment Comments:

The proposed development is considered consistent with the following objectives of this clause:

- ***To ensure the scale of development does not obscure important landscape features.***

Comment:

The proposed building on the existing site area no longer complies with the FSR control of 0.6:1. The increased FSR is now 0.66:1 (10.7% variation) and 0.74:1 (24.4% variation). The increase

in FSR is a direct result of the new enclosing of the undercroft area within the footprint of the approved dwelling houses. In this regard, it is noted that the Manly LEP calculates FSR based on the whole of the site area. Overall, the scale of development as modified is substantially the same and does not unreasonably obscure important landscape features.

In consideration of the Lauderdale Avenue frontage the building continues to present as the previously approved five (5) level dwelling house, stepping up the steep escarpment. The Lauderdale Avenue streetscape is characterised by significantly sloping natural topography either side of the road in that dwellings on the higher side generally have much higher rear elevation / setting overlooking the street.

As a result, the modified design continues to be consistent with the original assessment that found the variation to the 3 storey control does not create an unreasonable impact on surrounding land and is consistent with the pattern of surrounding development on similar sloping positions.

- ***To minimise disruption to views to adjacent and nearby development.***

Comment:

The non-compliance with the FSR for the modification proposed does not create an unreasonable disruption to views for adjacent and nearby development as the design of the additional floor space being located within the previously approved undercroft area of the dwelling houses and maintains the existing setbacks. The modification maintains consistency with the surrounding bulk and scale of dwellings in the vicinity (visual catchment) of the site and maintains the approved landscape open space. The modification maintains consistency with this control.

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

Comment:

The modification to the FSR does not create any unreasonable impact on sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

In summary, the proposal is considered to maintain consistency with the FSR objectives pursuant to this clause.

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

Note: The objective of Manly LEP objectives at clause 4.4(1) have been also considered in context of the DCP requirements.

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 2019

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 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. Mod2021/0053 for Modification of Development Consent DA2019/0509 granted for demolition works, subdivision of one lot into two and construction of two semi-detached dwellings on land at Lot 1 DP 172127,52 Lauderdale Avenue, FAIRLIGHT, 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
Calculations A0.02	13/01/2021	Platform Architects
Mezzanine Floor Plan A1.01	13/01/2021	Platform Architects
Undercroft Floor Plan A1.02	13/01/2021	Platform Architects
South Elevation A2.01	13/01/2021	Platform Architects
West Elevation A2.02	13/01/2021	Platform Architects
North Elevation A2.03	13/01/2021	Platform Architects
East Elevation A2.04	13/01/2021	Platform Architects
Section AA A3.01	13/01/2021	Platform Architects
Section BB A3.02	13/01/2021	Platform Architects
Section CC A3.03	13/01/2021	Platform Architects
Section DD A3.04	13/01/2021	Platform Architects
Driveway A5.03	13/01/2021	Platform Architects

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.

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

Signed



Catriona Shirley, Planner

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



Rodney Piggott, Manager Development Assessments