

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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

Application Lodged:	09/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/01/2023 to 01/02/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 297,089.28
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PROPOSED DEVELOPMENT IN DETAIL

Development application DA2022/2270 for alterations and additions to an existing semi-detached dwelling. The works comprise;

- Internal alterations to the ground floor, including the provision of an open plan dining, living and kitchen area at the rear of the building.
- Construction of a first floor addition, including a master bedroom and home office.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

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

Development

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

Map:



SITE HISTORY

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

DA2020/0482

Development application for the construction of a swimming pool and spa approved on 30 June 2020.

Application History

The history of this application is detailed as below;

28 December 2022

Application received.

18 January 2023 to 1 February 2023

Public notification. Two submissions received.

28 February 2023

Site inspection and preliminary assessment complete.

1 March 2023

Request For Information (RFI) letter was sent to the listed Applicant, via email and the NSW Planning Portal. The RFI requested the following information:

- An acoustic assessment.
- Amended plans to comply with the FSR development standard and minimise the bulk and scale of the first floor addition from a heritage perspective.

17 March 2023

Additional information was provided to Council in regards to the above letter. This information included an amended master-set with the following changes;

- GFA reduction of 0.5m².
- Reduced the scale of the proposed dormer to 'Home Office'.
- Updated finishes and colours.

In addition, an amended SEE was provided, which included an assessment against Section 2.120 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

13 April 2023

Request For Information (RFI) letter was sent to the listed Applicant, via email and the NSW Planning Portal. The RFI requested the following information:

- Landowner's consent from No. 168 Pittwater Road, or;
- Amended plans that remove any works to the party wall and are diagrammatically supported through detailed construction drawings and methodology which demonstrate how the proposal complies with the terms of the existing easement for support and in no way relies upon or affects the integrity of the party wall in any way.

15 May 2023

Additional information was provided to Council. This consisted of plans demonstrating a non-compliance with the BCA minimum floor to ceiling requirements as a result of the recommended Heritage Conditions.

25 May 2023

The concern regarding Landowner's consent was not resolved with the latest amendment. As such, a further letter was sent to the applicant. This letter reiterated the information detailed in the RFI letter, and granted the Applicant 7 days to provide the information previously requested on 13 April 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any 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 Matters for Consideration	Comments
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)(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>Clause 23</u> of the EP&A Regulation 2021 requires development applications to be made by the owner of the land to which the development application relates, or another person, with the written consent of the owner of the land. The development application relates to the adjoining land known as No. 168 Pittwater Road, as works are proposed over the common boundary and the first floor at certain points is subject to an existing easement for support of the party (or common) wall. The owners of No. 168 Pittwater Road have not provided consent and this has formed the reason for refusal of this application.</p> <p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. Should this application be recommended for an approval, this matter would be addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should this application be recommended for an approval, this matter would be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. Should this application be recommended for an approval, this matter would be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should this application be recommended for an approval, this matter would be 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) 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</p>

Section 4.15 Matters for Consideration	Comments
	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 18/01/2023 to 01/02/2023 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 2 submission/s from:

Name:	Address:
Mr Sebastian De Brennan	Level 7 53 Martin Place SYDNEY NSW 2000
Collard Maxwell Architects Pty Ltd	Level 2 97 Pacific Highway NORTH SYDNEY NSW 2060

The following issues were raised in the submissions:

- **Overshadowing,**
- **Wall height and side setback non-compliances,**
- **Party wall,**
- **Sewer.**

The above issues are addressed as follows:

- **Overshadowing**

The submissions raised concerns that the proposal will give rise to unacceptable overshadowing impacts.

Comment:

An assessment of the application against Clause 3.4.2 Sunlight Access and Overshadowing of the Manly DCP reveals that the application is acceptable with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties. In addition, clear attempts to minimise overshadowing impacts to the concerned properties are evident within the amended proposal's design, as the works sits well below the maximum allowable height and provides acceptable setbacks.

This matter does not warrant the refusal of this application.

- **Wall height and side setback non-compliances**

The submissions raised concerns that the proposal results in a wall height non-compliance that is inconsistent with the provisions of Manly DCP.

Comment:

It is acknowledged that the proposal is non-compliant with the Manly DCP wall height and setback controls. As such, the merits of these non-compliances have been assessed against the objectives of the relevant controls. In summary, the works are found to be consistent with the objectives of these controls, as the proposal has responded appropriately to the site constraints, while remaining compatible with the existing built form and not giving rise to any adverse amenity impacts.

This matter does not warrant the refusal of this application.

- **Party-wall**

The submissions raised concerns that the proposal will give rise to unacceptable impacts to the party wall shared with No. 168 Pittwater Road.

Comment:

The proposed first floor at certain points is subject to an existing easement for support of the party (or common) wall. Based on the information provided it is unclear whether the proposal complies with the terms of this easement. Therefore, insufficient information has been provided to assess the potential impacts to the party-wall.

This matter forms part of the refusal of this application.

- **Sewer**

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

Comment:

As per Clause 6.12 (Essential Services) of Manly LEP the maintenance or extension of essential services is not a relevant consideration when issuing development consent.

This matter does not warrant the refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i><u>Note:</u> 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.</i></p>
Landscape Officer	<p>The application seeks consent for alterations and additions to a dwelling house.</p> <p>The plans indicate that no significant landscape features are affected by the proposed works.</p> <p>Landscape planting requirements as approved under DA2020/0482 is considered adequate to address landscape requirements on the site.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site is located within a conservation area and in the vicinity of a heritage item:</p> <p>C1 - Pittwater Road Heritage Conservation Area</p> <p>Item I208 - Service station (former) - 167 Pittwater Road, Manly</p>
	Details of heritage items affected
	<p>Details of the Heritage Conservation Area as contained within the Manly Heritage inventory are:</p> <p>C1 - Pittwater Road Heritage Conservation Area</p> <p><u>Statement of Significance</u></p> <p>This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical Description</u></p> <p>The streetscape of Pittwater Road is a winding vista of late 19th and early 20th</p>

Internal Referral Body	Comments		
	century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually signifigant buildings which are listed seperately. Adjacent streets generally comprise a consistant pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to the existing semi-detached dwelling, that contributes positively to the Heritage Conservation Area and its context. The existing property is an intact example of a pair of single-storey semi-detached dwellings from the Federation era. Therefore, the heritage character of the building should be preserved and the impact of the proposed works/additions upon the existing building, its context and the HCA should be minimised. This impact can be reduced by minimising the height, bulk and scale of the proposed second storey addition and by setting it visibly back from and behind the main roof form of the original dwelling. The proposed upper level study space, could be moved off the rear main roof plane, and set further 700mm back from the side boundary to reduce the visibility of the new work to acceptable levels, and to assist a proper retention of the the existing chimney - free from the new external walls. Changes required to make it acceptable on heritage grounds would be:</p> <ul style="list-style-type: none">• The addition form should sit completely behind the main roof• The external cladding, shown as vertical, preferably be horizontal;• The upper level study space, could be moved off the rear main roof plane, and set further 700mm back from the side boundary to reduce the visibility and set the existing chimney - free from the new external walls.• A revised schedule of materials and finishes with the actual finishes and colours (not similar) should be provided.• The roof must not be “metal decking” but Custom Orb profile.		

Internal Referral Body	Comments
	<p>Revised Comments - 06 April 2023</p> <p>Amended drawings have resolved some issues Heritage had with the proposal. Generally, new materials must reflect the historic character of the heritage conservation area, where visible from the street, therefore changing the proposed roof cladding to custom orb profile is a positive outcome, however the colour "basalt" is considered to be inappropriate for the character of the area as dark colours, such as black and grey, are not acceptable within the Pittwater Road Conservation Area. Similarly the same colour for the wall cladding is inappropriate and should be replaced with a recessive colour.</p> <p>The side setback has been increased by 460mm to reveal the existing chimney, that is considered to be insufficient as this distance would not allow the chimney to be free from the external walls of the first floor addition. It is noted that the internal room size at this location is tight for further setback, therefore Heritage recommends the proposed ridge height be reduced to be 200mm lower than the ridge level of the original roof in order to increase the visibility of the chimney and reduce the overall visibility of the first floor addition from the street.</p> <p>Given the proposed works are mainly confined to the rear of the existing building and the front portion of the original semi is retained the impact of the proposal upon the heritage conservation area is considered manageable.</p> <p>Revised Comments - 24 May 2023</p> <p>Further to reviewing the amended drawings and statements, Heritage is convinced that the reduced ridge level will result in non-compliant habitable head room in some areas of the first floor addition, therefore this condition will be removed from the referral response.</p> <p>The proposed external colour (roof and wall) for the first floor addition has been changed to "Windspray", however, Heritage recommends the colour "Wallaby" as this colour is considered to be very similar to the proposed "Windspray" but responds better to the heritage context. The proposed wall cladding material must be clearly identified and horizontal cladding is considered to be a more appropriate option than vertical cladding. The proposed trim colour "Domino" should be limited to the use for new door and window frames only and shouldn't be used on the existing/original doors and windows. Heritage will retain the condition for external colours and finishes.</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? Yes Has a Heritage Impact Statement been provided? Yes</p> <p>Further Comments</p>

Internal Referral Body	Comments

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 would be included as a condition of consent, in the event that the development is approved.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A463505 dated 5 December 2022).

Should this application be recommended for an approval, this matter would be addressed via a condition of consent 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 (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed development is not considered likely to negatively impact upon the matters raised above in subclause (1).

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

impact.

Comment:

The proposed development has been designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

Division 5 General

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

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

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	7.0m	Yes
Floor Space Ratio	FSR: 0.6:1 (146.7m ²)	FSR: 0.599:1 (146.5m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

5.10 Heritage conservation

The subject site is contained within the Pittwater Road Conservation Area, which is generally defined by its 19th century atmosphere due to its scale, width and the number of extant Victorian structures. The proposed works are all contained within the rear yard and will not be readily visible, when viewed from Pittwater Road. Notwithstanding, the proposal was referred to Council's Heritage Planner, who raised no objections to the proposal.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 244.5m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	6.5m (based on gradient 0)	7.0m	7.7%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.4m	N/A	Yes
	Pitch: maximum 35 degrees	42 degrees	20%	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	2.7m (Existing)	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: Semi-detached	Nil (Existing)	N/A	N/A
	S: 2.2m (based on wall height 6.59m)	0.9m - 3.0m (First floor)	59.1%	No
	Windows: 3m	2.6m	13.3%	No
4.1.4.4 Rear Setbacks	8m	9.1m (First floor)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	39% or 96m ² (Existing)	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	44.2% or 42.4m ² (Existing)	N/A	N/A

4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces (existing)	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	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

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The proposal is seen to provide equitable access to light and sunshine, when accounting for the existing site constraints and the compliant building height of the development. Such constraints include the need from a heritage perspective, to ensure that the proposed additions were not visible from the Pittwater Road frontage, which limits the bulk of the additions to the rear of the site. In addition, with the east-west orientation of the site, the ground floor northern side windows of No. 164 Pittwater Road are

highly vulnerable to overshadowing, due to the lot configuration and the medium density zoning of the site which results in sunlight being harder to protect. While the proposed development results in additional overshadowing to No. 164 Pittwater Road, this overshadowing is not considered unreasonable, as the concerned windows are attached to service rooms, bedrooms and kitchens. Further, it should be noted that the proposal is of a similar scale to the existing first floor additions of surrounding terraces and that these developments have contributed to limiting the extent of remaining solar access available for those neighbouring. The proposed development allows for adequate sunlight penetration to No. 164 Pittwater Road, as detailed below in relation to Objective 2.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

No. 164 Pittwater Road, Manly - South of subject site

Clause 3.4.1.2 a) of the Manly DCP requires at least 2 hours of solar access be retained to living room windows that presently enjoy solar sunlight between 9am and 3pm on the winter solstice. As stated previously, the ground floor northern side windows of No. 164 Pittwater Road are highly vulnerable to overshadowing, due to the lot configuration and the medium density zoning of the site which results in sunlight being harder to protect. A review of Council's records indicates that the windows subject to overshadowing are attached to service rooms, bedrooms and kitchens. It must be noted that the property was not inspected as no objection was received.

On the ground level, the north facing windows will be overshadowed from 9am-3pm. Whilst insufficient sunlight is provided to the ground floor windows, this overshadowing is unavoidable with any first floor redevelopment and the proposed addition has been designed to mitigate any unreasonable impact through a compliant building height and increased first floor setbacks. In this regard, the proposal provides equitable access to sunlight when considering the overall impact to No. 164 Pittwater Road and outdoor private open space.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The first floor addition includes a varied setback between 0.9 metres to 3.0 metres to the southern side boundary. The site having a lot width of 7.5 metres and the existing building being an attached terrace, results in difficulties with facilitating a greater level of modulation or increased setbacks. Consideration has been given that proposal as conditioned reflects a first floor that attempts to provide adequate bedroom sizes, ceiling heights, adequate internal amenity and cavity spaces for services.

Based on the above, the proposed development is consistent with the objectives of the control and the

non-compliance could be supported on merit if the application was not recommended for refusal.

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

Description of non-compliance

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013.

Clause 4.1.2 of the MDCP stipulates that walls are not to exceed 6.5 metres. The proposal would result in a maximum northern wall height up to 7.0 metres above the existing ground level. This represents a 7.7% variation to the numeric control.

Merit consideration:

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

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

Comment:

The proposed height of the building is minimised by a low roof pitch and suitable articulation. The visual impact upon the streetscape will be acceptable and not unreasonable in this residential setting, as the non-compliant proportions will be largely screened by the existing roof form and proposed planting.

b) to control the bulk and scale of buildings,

Comment:

The proposal is adequately articulated using recessed and modulated walls, fenestration, eaves and changes in materials to break up built form. The amended design provides a low roof pitch which minimises the building height and mitigates as best possible the impact of height from the roof without having to resort to a completely flat roof that would be out of character. It is noted that flat roof designs are inconsistent within the immediate locality. In this regard, the proposal has been designed with consideration of the site constraints and will not give rise to adverse building bulk.

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 proposal will not result in the loss of views.

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 development are minimal and acceptable in terms of their impact on habitable rooms of the adjoining properties and public open space.

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 within or adjacent to a recreation or environmental protection zone.

Based on the above, the proposed development is consistent with the objectives of the control and the non-compliance could be supported on merit if the application was not recommended for refusal.

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

Description of non-compliance

Side setback

The proposed first floor addition includes a minimum southern side setback of 0.9 metres. MDCP requires a minimum western setback of 2.2 metres (based on wall height of 6.59 metres).

Windows

The proposed southern elevation includes two windows that are within 3.0 metres of the southern boundary.

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 first floor as amended is not readily visible from the street, as it sits well below the prescribed height limit and is adequately set back from the frontage, while adjoining development will reasonably screen the works when viewed at side angles along Pittwater Road. As such, the proposed additions are of a contemporary design and do not dominate or challenge heritage details or character of the Pittwater Road heritage conservation area. The proposed development does not seek the removal of any significant vegetation. should this application be recommended for an approval, this proposal would result in acceptable streetscape outcomes.

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 proposal has been suitably designed to preserve local amenity through providing reasonable privacy between buildings.

The proposed addition will result in additional overshadowing to the southern site's ground floor windows and an assessment of the proposal's impacts has been undertaken within Section 3.4.1 (Sunlight Access and Overshadowing) of this report. In summary, it is considered that the proposal maintains equitable access to sunlight between sites.

The proposal will not result in the loss of views.

As mentioned elsewhere the proposal has been designed to maintain acceptable streetscape outcomes.

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

Comment:

The proposed setback breach is considered to be acceptable given the characteristics of the site and the absence of any adverse amenity impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal provides landscaped area which is consistent with the control for nearby dwellings and proposes vegetation to the front of the site. This provides a reasonable circumstance for natural features.

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

Comment:

Not applicable.

Based on the above, the proposed development is consistent with the objectives of the control and the non-compliance could be supported on merit if the application was not recommended for refusal.

4.1.5 Open Space and Landscaping

The site has an existing non-compliant total open space provision. The proposed alterations and

additions to the dwelling are contained within the footprint of existing building and do not result in the reduction in total open space or significant vegetation.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$2,971 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$297,089.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

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

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

Particulars:

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

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

Signed



Kye Miles, Planner

The application is determined on 06/06/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments