

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0029
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Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot CP SP 10040, 46 Victoria Parade MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA367/2010 granted for demolition works and construction of a residential flat building
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 10040
Applicant:	BBF Town Planners

Application lodged:	31/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	13/02/2019 to 02/03/2019
Advertised:	16/02/2019
Submissions Received:	27
Recommendation:	Refusal

Executive Summary

This report provides an assessment of a Modification of Development Consent (MOD2019/0029) for a five (5) storey residential flat building with basement parking at No. 46 Victoria Parade, Manly.

The original consent was issued by the NSW Land and Environment Court on 23 December 2011 for a residential flat building containing thirteen (13) apartments with basement parking for eighteen (18) cars. This consent established specific conditions relating to the maintenance of amenity through the rear setback of the building and roof design.

On 4 December 2018, the NBLPP refused MOD2018/0294 as the application provided insufficient information to assess the shadow impacts of the modifications on the adjoining property to the west at 42-44 Victoria Parade and insufficient information to assess the proposed ceiling heights or roof form changes.

The current application seeks to modify the court consent and includes most of the changes previously proposed under MOD2018/0294, specifically the reduction of the rear setback of the building with some additional facade and roof changes. The applicant has provided a revised shadow analysis for the approved and proposed building forms to demonstrate that there is no additional adverse impact on the adjoining property in terms of overshadowing from the amended design, particularly the changes to the roof form.

The subject site is zoned R3 Medium Density Residential under Manly Local Environmental Plan 2013 (MLEP 2013). Development for the purposes of a 'residential flat building' is permissible with consent.

The assessment of the modified application has concluded that notwithstanding the changes to the roof form and addition of a lift overrun, the proposal in terms of solar access and overshadowing has been demonstrated as acceptable. The assessment of the proposed changes at the rear of the property reducing the approved building setback by up to 1.5m are considered an unnecessary additional non-compliance on the site that will result in adverse amenity impacts on the adjacent properties. The further reduction of the rear setback is not supported. The application is not suitable to consent to with conditions as the internal layout of the apartments on Level 1 and Level 2 would require a redesign in order for the floor plate to comply with the setback.

The application was advertised and notified in accordance with the Manly Development Control Plan 2013 (MDCP 2013) and twenty seven (27) submissions were received. Accordingly, the application is referred to the NBLPP for determination.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot CP SP 10040 , 46 Victoria Parade MANLY NSW 2095
Detailed Site Description:	<p>The site is located on the south-eastern side of Victoria Parade Manly and has a north-western to south-eastern orientation. It is legally described as Strata Plan 10040.</p> <p>The site is level and is a rectangular shape. It is 14.56 m wide (at the Victoria Parade frontage) with side boundaries being 42.06 metres. The rear of the site is 14.585 metres wide. It adjoins a heritage-listed electricity substation (No 16124).</p> <p>The substation shares a boundary of 9.265 metres with the subject site. The remainder of the rear boundary and the adjacent north-eastern side boundary adjoin Dungowan Lane. Total site area is approximately 612.8m².</p> <p>Surrounding Development</p> <ul style="list-style-type: none"> • To the north-east: No 14 South Steyne (heritage listed) and a multi-storey hotel building. • To the south-east: A one-storey sub-station and adjacent to that, a multi-storey hotel building • To the south-west: No 42-44 Victoria Parade (Pacific Harbour), a five-storey residential flat building of twenty units. • Opposite the site are several heritage listed buildings which back onto the Royal Far West complex. • The street trees of Victoria Parade have environmental heritage status.

Map:



SITE HISTORY

21 April 2011

Development application DA367/2010 for a seven (7) storey residential flat building containing eleven (11) units and two (2) levels of basement parking for eighteen (18) vehicles was refused by the Manly Independent Assessment Panel (MIAP) on 21 April 2011

22 July 2011

Section 82a Review of Determination against refusal of DA367/2010 was lodged. The application had been amended to a six (6) storey residential flat building with ten (10) apartments and one level of basement car parking for ten (10) vehicles.

12 October 2011

Land and Environment Court appeal lodged for the 'deemed refusal' of the s82a review.

23 December 2011

DA367/2010 approved through s34 agreement and consent orders issued by the NSW Land and Environment Court.

17 September 2012

DA367/2010/2 - s 34 agreement for s96(8) modification to consent for 5 storey residential flat building with basement carparking for 18 cars.

21 August 2014

DA367/2010/3 - This modification of the court consent (S96AA) was approved by MIAP.

4 December 2018

MOD2018/0294 - This 4.56 modification application of DA367/2010 (court consent) was refused by the NBLPP for the following reasons:

1. The information provided with the modification application is insufficient to enable a proper assessment of the shadow impacts on the adjoining property to the west, number 42 –

44 Victoria Parade Manly.

2. The information provided with the modification application is insufficient to enable a proper assessment of the proposed ceiling heights and roof form of the building.

MOD2019/0029

This 4.56 modification application was lodged with Council on 31 January 2019 and seeks to modify the development as approved both internally and externally and is the subject of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.56 (previously 96(AA)) of the EP&A Act seeks to address the reasons for refusal provided by NBLPP on 4 December 2018 for Mod2018/0294. The modifications to the development include:

General changes proposed:

- Lowering of the maximum roof level by 202mm to RL20.98,
- Modification to roof form from a hipped roof to a flat roof set 202mm below the approved maximum roof ridge height of 21.20 and change to the shape of the roof cutout on the western side
- Chamfer the roof profile from gridline D @ 14 degrees around a cutout in the roofline from gridline 7 to 0.8m past gridline 8 (total maximum width 3.1m)
- Move Levels 3 and 4 in an easterly direction by 600mm to address shadowing impact between 9 am and 12 noon.
- Amended floor to ceiling heights to each level to provide 2.7m internal ceiling height
- Modifications to window locations and arrangements
- Addition of a lift overrun to RL21.78
- Reduction of the balcony area to the north-western elevation at level 4, Unit 4A and level 3, Unit 3B
- Adjustment to fire stair location and lobby
- Front units on Levels 3 and 4 moved to the east by 600mm to align with boundary
- Modifications to the balcony sizes and building footprint, including the enclosure of part of the balconies to the southern elevation at levels 1 and 2
- Changes to apartment configurations at each floor level, reducing the total numbers of units from 13 units to 11 units comprising the following mix:

Ground Floor

1 x 3 bed + study (or 4 bed unit - unit G)

First Floor

1 x 4 bed + theatre room (or 5 bed unit - unit 1A)

1 x 1 bed + study (or 2 bed unit - unit 1B)

Second Floor

2 x 2 bed (unit 2A and 2B)

1 x 1 bed + study (or 2 bed unit - unit 2C)

Third Floor

1 x 1 bed + study (or 2 bed unit - unit 3A)

1 x 2 bed (unit 3B)

1 x 1 bed (unit 3C)

Fourth Floor

1 x 3 bed (unit 4A)

1 x 1 bed (unit 4B)

Notwithstanding the unit configuration quoted on the plans, the unit layouts include study and theatre rooms which are commensurate in size to bedrooms. The development actually provides the following unit mix:

- o 1 x 5 bed
- o 1 x 4 bed
- o 1 x 3 bed
- o 6 x 2 bed
- o 2 x 1 bed

Basement Level

- Modification to basement car parking layout including provision of 17 car parking spaces utilising the approved car stacker arrangement, plus two accessible car parking spaces, with a total 19 car parking spaces provided within the basement level. (In addition to the basement parking, the modified design maintains the three (3) visitor spaces accessed off Dungowan Lane, as approved.)
- Revised fire stair configuration, dedicated storage areas to each apartment located around the southern end of the basement
- Basement boundary wall extended into the south-west corner (additional 12m²)
- Relocation of the waste storage area to the basement with a temporary collection area provided adjacent to Dungowan Lane.

Ground Floor Level

- Changes as detailed above to the unit layout
- Relocation of mechanical plant room behind visitor parking

The application also proposes the deletion/ modification of the following conditions. The comments under each item are the applicant's reasons for their requested changes.

Modification of Condition 1

"The rear wall (southern elevation) of the proposed building is to be setback a minimum of 11 metres from the rear (northern) boundary of the property known as 27 Ashburner Street Manly SP76027. The rear balconies are to be setback a minimum 9.5 metres from the rear (northern) boundary the property known as **47** (27) Ashburner Street, Manly being SP76027. Plans are to be suitably amended prior to the issue of the Construction Certificate."

**bold indicates error in condition – this condition should reference 27 Ashburner Street*

Deletion of condition 96

This condition can be deleted based on the acceptability of the privacy impacts associated with the reconfigured lift lobby and adjacent balcony.

Deletion of Condition 101

We seek to delete this condition pertaining to shadowing impacts on the basis that the accompanying shadow diagrams and analysis are accurate and sufficient to enable a proper assessment of the shadow impacts on the adjoining property to the west.

Deletion of Condition 119

This condition can be deleted based on the acceptability of the privacy impacts associated with the reconfigured lift lobby and adjacent balcony.

Modification of Condition DA1 to reference the modified documentation.

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 DA367/2010, in full, with amendments detailed and assessed as follows:

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

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	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 DA367/2010 .and subsequent approved modifications.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent	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 2013 and Manly Development Control Plan.

Section 4.56- Other Modifications	Comments
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	
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA367/2010.
(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 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – 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>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This

Section 79C 'Matters for Consideration'	Comments
	<p>documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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	The scope of amendments proposed by this modification

Section 79C 'Matters for Consideration'	Comments
interest	<p>application are extensive as outlined within the Detailed Description of Development. No objection is raised to the modifications within the basement or minor changes to the balconies at the front of the building (Unit 3B and Unit 4A) or the roof line.</p> <p>While the revised unit layouts comply with the requirements of SEPP 65, the apartments at the rear on Level 1 and Level 2 (Unit 1B and Unit 2C) rely on the revised configuration extending a further 1.5m into the rear building setback to provide a functional working apartment. This development appears to incorporate incremental increases in floor area and building bulk with each amendment to the design.</p> <p>The development as currently approved substantially exceeds many of the Manly building controls including height and setback. The further encroachment into the rear setback in this instance is considered an unjustified additional breach which will create additional adverse impacts on the adjoining property owners to the west.</p> <p>While the revised shadow diagrams appear to support this extra building bulk, the physical impact of this extended building section on the small setback corridor available at the rear of the site to allow natural light, ventilation, and separation between sites is considered unnecessarily compromised.</p> <p>The proposed modifications, in particular the additional building bulk and the extension of the building form a further 1.5m into the rear setback of the site, are considered an over-development which is not in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 27 submission/s from:

Name:	Address:
Ms Kathryn Jane Fayle	Po Box 866 MANLY NSW 1655

Name:	Address:
Mr Jeffrey David Schaffer	5 / 25 - 27 Victoria Parade MANLY NSW 2095
Ms Barbara Mary Vickers	20/42-44 Victoria Parade MANLY NSW 2095
Robinson Strata Management	PO BOX 280 FRESHWATER NSW 2096
Mr Edmond Hall Mrs Judith Hall	12 David Road COLLAROY PLATEAU NSW 2097
Mr Christopher John Taylor	Po Box 66 MANLY NSW 1655
Proprietors of Strata Plan 12935	43 Ashburner Street MANLY NSW 2095
Mr Edward Lee Keller	Po Box 758 MANLY NSW 1655
Pamela Humphreys	23 / 7 South Steyne MANLY NSW 2095
Mr Kum Leong Bernard Ho	C/- L J Hooker Shop 63/197-215 Condamine Street BALGOWLAH NSW 2093
Mr Geoff Kaye	16 / 42 Victoria Parade MANLY NSW 2095
Mr Jeremy Ross Cooper	22 / 7 South Steyne MANLY NSW 2095
Mr Martin Nielson Schmidt	4 / 42 Victoria Parade MANLY NSW 2095
Mr Michael William Skillicorn	13 Nield Avenue BALGOWLAH NSW 2093
Mr David Leslie Schmidt	7 Hendy Avenue COLLAROY NSW 2097
Ms Sheridan May Nossiter	14 / 7 South Steyne MANLY NSW 2095
Mr David Edwards	24 / 7 South Steyne MANLY NSW 2095
Mr Graham John Butson	5 / 42 Victoria Parade MANLY NSW 2095
Mr George Varga	19 / 42 Victoria Parade MANLY NSW 2095
Mr Warwick Anthony Marshall	1 Rymills Lane ORANGE NSW 2800
Mr Geoffrey Alistair Kaye Ms Ann Beth Hatton	16 / 42 Victoria Parade MANLY NSW 2095
Mrs Peta Vivienne Butson	5 / 42 Victoria Parade MANLY NSW 2095
Michael Vimal Du Monteil Mrs Annemieke Vimal Du Monteil	12 Worrobbil Street NORTH BALGOWLAH NSW 2093
Mr Ricky Brett Koster	6 / 7 South Steyne MANLY NSW 2095
Mr Martin Gerard Walker Mrs Deborah Jane Walker	46 McIntyre Street GORDON NSW 2072
Mr Michael Edwyn West	9/42-44 Victoria Parade MANLY NSW 2095
Mr Clive Owen Gestern Williams	3 Arthur Circuit FORREST NSW 2603

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

- **Overshadowing and accuracy of shadow drawings**
- **View Impacts**
- **Building Height and Floor to Ceiling Heights**
- **Enclosure of rear balconies at Level 1 and 2 (Unit 1B and 2C) and addition of louvres within rear setback**

- **Change to roof design**
- **Landscaping**
- **Deletion of Condition 101**
- **Changes proposed are not all highlighted in the plans**
- **Level 4 Balcony (Condition 119 deletion)**
- **Objection to proposed 7 storey building**

The matters raised within the submissions are addressed as follows:

- **Overshadowing and accuracy of shadow drawings**

Comment:

It is acknowledged that this development has had a change of architect since the original court approval from Woodhouse and Danks Architects. The original diagrams were revised by Design Cubicle and accompanied the previous modification application in 2014. It is now claimed that those previous shadow diagrams were incorrectly generated using magnetic north and not true north as required by the Land and Environment Court practice notes.

Due to the extent of uncertainty resulting from the previous shadow diagrams, the current architects ARC Architects have engaged Urbaine Architecture to remodel the current modified design with the Design Cubicle shadow impacts of the originally approved proposal using new survey data incorporating accurate window openings within the building at 42-44 Victoria Parade which it is alleged were not previously correct.

The current shadow diagrams plot the previously approved development using True North with correct surveyed window locations and the proposed amended design for comparison.

The shadow analysis now provided indicates the following:

1. No east facing windows or balconies within the adjoining building at 42-44 Victoria Parade are further affected by overshadowing as a result of the modifications between 9am and 3pm on 22 June.
2. The yellow shading on the shadow diagrams prepared by Urbaine Architecture indicates a net reduction of shadows from the currently approved design.
3. Some minor additional overshadowing indicated in red between 9am and 11am affect solid masonry elements of the building only and not windows or balconies.

The Urbaine Architecture shadow diagrams have been certified by the Architect as correct and accurate. Council has reviewed these plans and considers them to be reliable to accurately ascertain the impacts from the proposed development/modifications.

- **View Impacts**

Comment:

A view assessment of the proposed modifications has been included within Part 3.4.3 Maintenance of Views within the Manly DCP 2013 section of this report. The applicant has provided a view analysis of the proposed building with the modifications shaded out from the view corridor at each level. The views from the north-east corner of the building are retained by the amended balconies at Level 3 (Unit 3B) and Level 4 (Unit 4A) where the western corner of these balconies has been removed completely.

The proposal is considered acceptable in terms of addressing any potential view loss. This issue

does not hold determining weight.

- **Building Height and Floor to Ceiling Heights**

Comment:

The floor to ceiling heights originally provided for in the Design Cubicle drawings allowed a clearance from the top of one floor slab to the underside of the slab above of approximately 2.75m. In order to provide a floor to ceiling clearance of 2.7m to comply with SEPP 65 and the Apartment Design Guide, the design has moved the finished floor levels accordingly and amended the roof design to a flat roof to reduce the need for further overall building height. As the design amendments have included a chamfered roof section along the western side of the roof line to ensure the solar access to No. 42-44 Victoria Parade is retained, no objection is raised to the amended floor levels. This issue does not warrant refusal of the application.

- **Enclosure of rear balconies at Level 1 and 2 (Unit 1B and 2C) and addition of louvres within rear setback**

Comment:

As indicated in the submissions, the rear setback for this development was established as part of the Land and Environment Court proceedings with a setback to the face of the building on the southern facade of 4.765m measured to the boundary of the heritage substation in Dungowan Lane. Condition 1 as drafted in the original consent DA367/2010 states:

“1.

The rear wall (southern elevation) of the proposed building is to be setback a minimum of 11 metres from the rear (northern) boundary of the property known as 27 Ashburner Street Manly SP76027. The rear balconies are to be setback a minimum 9.5 metres from the rear (northern) boundary the property known as 47 Ashburner Street, Manly being SP76027. Plans are to be suitably amended prior to the issue of the Construction Certificate.

Reason: To achieve closer compliance with Council's Development control Plan for the Residential Zone Amendment 1 and reduce impacts on the amenity of adjoining properties.”

This setback measurement is taken from the boundary of the property on the southern side of the substation. This southern boundary contains a step in front of the substation facade resulting in a varying width for the substation of between 6.23m and 6.73m. None of the previous reports from the court proceedings or subsequent modifications clarify from which point the setback was taken. As the setback on the survey plan at the Dungowan building line is 6.23m, it is this point that has been used for the purpose of calculating setbacks for this assessment.

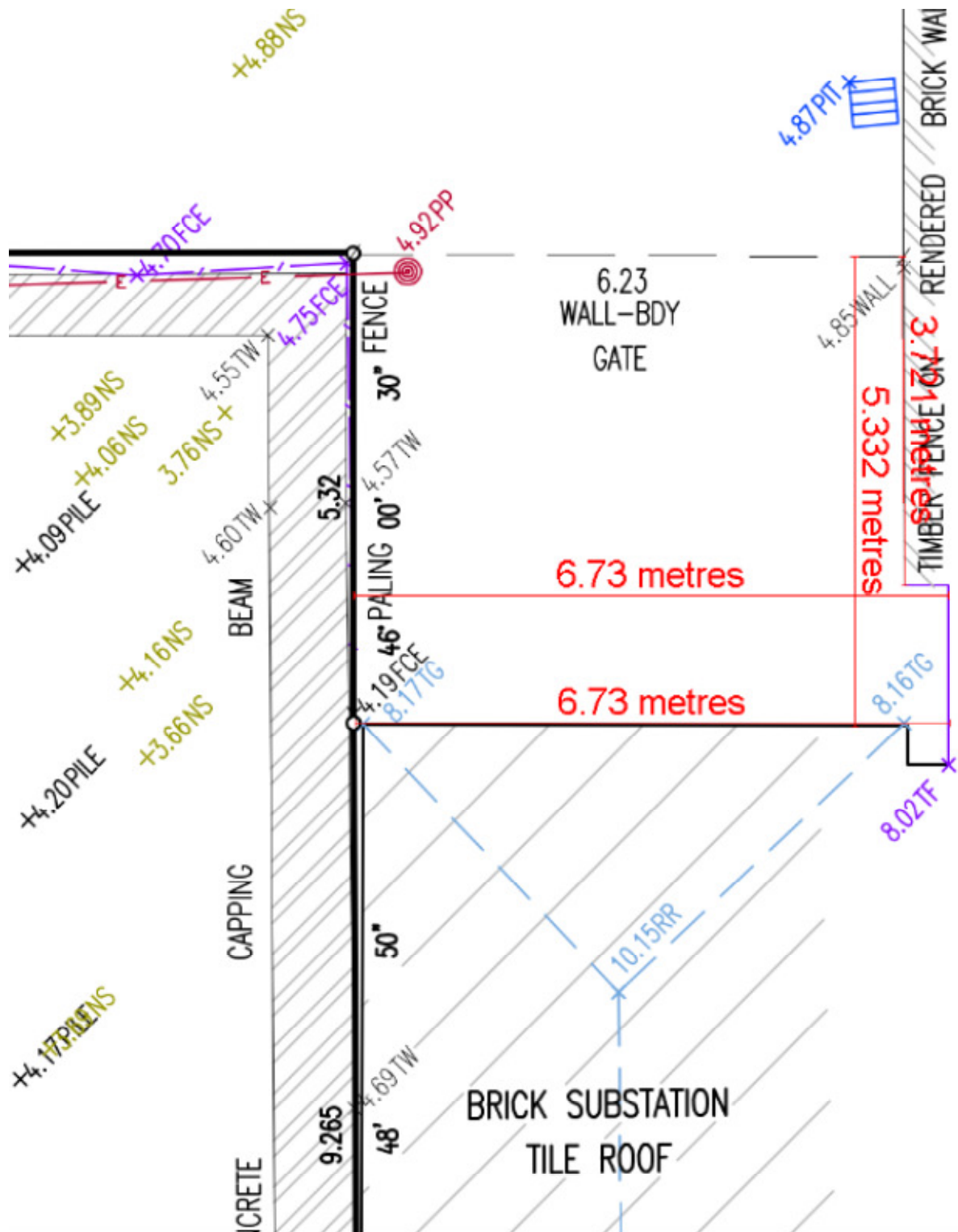


Figure 1 - Boundary setbacks to Substation - Source: Survey Plan supplied with application prepared by Veris Australia

Adopting this dimension of 6.23m, the changes proposed to the Level 1 and Level 2 facade will result in a setback to the substation of 3.2m and a setback to the southern substation boundary of 9.43m. The original condition 1 references a requirement for the setback to the building facade of 11m and to the balcony of 9.5m. This results in a further departure of 1.5m from the court consent.

In relation to the louvres added to the rear facade of these extensions, there is no objection to

this form of shading/screening device in principle except that they will be attached to a building element that is within the rear setback.

The extension of the building footprint 1.5m further into the rear setback is not supported and has been included as a reason for refusal.

- **Change to roof design**

Comment:

The roof design has been changed from a pitched roof to a flat roof with a chamfered edge along the western side. This change has resulted from the need to adjust the internal floor to ceiling heights into compliance with SEPP 65 and the ADG and ensure that the overall building height, particularly along the western side of the building does not increase or create any greater overshadowing of the adjoining property to the west.

An assessment of the changes as they impact the shadows on the facade of No. 42-44 Victoria Parade has been provided within Clause 3.4.1 of Manly DCP. The changes to the roof incorporating a 14 degree chamfer are considered to adequately address the issue of overshadowing resulting in no additional further material shadow impact on any window or balcony in the adjoining development. This issue does not hold determining weight.

- **Landscaping removal and Condition 92**

Comment:

Removal of landscaping in the south-western corner of the site is proposed as part of the modifications to the basement area. The submissions request that the requirements of Condition 92 be maintained. The application does not seek to remove or change Condition 92. Therefore the requirements for landscaping imposed under that condition are maintained.

In relation to landscaping removed along the boundary by the developer in 2015, it is assumed that this landscaping was within the subject site. Any works relating to this development should be within the subject site. Should any works occur on the neighbouring site by this development, Council's Compliance Sections should be notified. This issue does not hold determining weight.

- **Deletion of Condition 101**

Comment:

Following further discussions with the applicant about this aspect of the development, the Applicant proposed that this condition be amended instead of deleted to the following:

"101.

*The extent of the proposed west elevation (including new services at Level 4) is to be limited such that there will be no shadowing of **the east facing living room windows and balconies to the existing residential flat building at No.42-44 Victoria Parade** additional to that cast by the **approved modified shadow diagrams prepared by Urbaine Architecture dated January 2019.***

Reason: To reduce impacts on the amenity of adjoining residential properties."

Given the amendments to the design, and certification of the resulting shadow impacts not being

any greater than the already approved development, the modified wording to condition 101 is considered suitable and supported. This issue does not warrant refusal of the proposal.

- **Changes proposed are not all highlighted in the plans**

Comment:

The full subtleties of the modifications sought by this application have not been extensively highlighted on the plans. The accompanying Statement of Environmental Effects prepared by Boston Blyth Fleming Town Planners provides additional detail informing the scope of modifications sought.

The full list of modifications have been outlined within this assessment report under Detailed Description of Development.

The plans and documentation are sufficient for a full assessment, of all the proposed modifications, to be made.

This issue does not hold determining weight.

- **Level 4 Balcony (Condition 119 deletion)**

Comment:

The balcony referred to by this condition is on the western side of the building at Level 4 adjacent to the north side of the stair well. The condition states:

"The solid balustrade on western elevation of level four at RL 17.265 which is related to the lobby area of Units 12 and 13 is to be replaced with a clear glass balustrade so as to remove the proposed planter.

Reason: To protect the amenity of neighbours"

Following discussions with Council after notification of the application, the applicant agreed in writing to abandon the deletion of this condition and accept the requirements of the condition. Accordingly, this issue does not hold determining weight.

- **Objection to proposed 7 storey building**

Comment:

A number of submissions were received objecting to the development generally and referring to the original design. These submissions do not provide any objection to the specific modifications that are the subject of this application and therefore, do not warrant refusal of the modifications.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Approval (subject to conditions)

Internal Referral Body	Comments
	<p>The application seeks amendments to the current approval as detailed.</p> <p>Compliance with the National Construction Code (NCC) DTS provisions has not been achieved. However a qualified Fire Engineer has identified in a submission with the Modified application that in regards to:</p> <p>1. Certain non compliant 'Egress paths' located on the south side of the building, a proposed NCC Performance Based Solution based primarily on construction of a new 2.0 m high wall of solid non-combustible construction such as concrete or masonry is proposed to be provided to separate 'unprotected windows' from the required egress path.</p> <p>This should be considered as part of the DA Planning assessment review as to its suitability; and</p> <p>2. Unprotected openings on the Dungowan Lane frontage being located as little as 4.0 m from the opposite side of the laneway in lieu of 6.0 m (as required). It is proposed to support this identified departure by way of another NCC Performance Solution on the basis of 'window restrictions' provided to limit the opening of those windows to 100 mm maximum, together with externally mounted wall-wetting sprinklers</p> <p>There are no objections from the Building Certification Team to these proposals subject to conditions to ensure compliance with the National Construction Code/ Building Code of Australia.</p>
Landscape Officer	<p>Approval (subject to conditions)</p> <p>The modifications as set out in the Statement of Environmental Effects do not alter the landscape outcome for this development.</p>
NECC (Development Engineering)	<p>Approval</p> <p>Development Engineering has no objection to the modification application.</p> <p>No additional engineering condition is required when there is no significant change on building footprint and stormwater management method.</p>
Waste Officer	<p>Approval</p> <p>No objections have been raised by Council's Waste Services. It is noted that issues raised previously in relation to the requirement for the development to provide a bin room at ground level and within 6.5m of the front boundary to ensure they can be serviced by Council and/or its contractors has been addressed in this application with a bin room located adjacent to Dungowan Lane to be used for bin day only. Bin storage is to be within the basement.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Approval (subject to conditions)</p> <p>The proposal was referred to Ausgrid. A formal response was received from Ausgrid dated 16 March 2019 raising no objections to the proposed modifications subject to conditions. Should the application be considered for approval, the requirements of Ausgrid will be incorporated as a condition of consent.</p>
NSW Police - Local Command (CPTED)	<p>Approval</p> <p>The application was referred to the NSW Police for review. No issues, objections or conditions were received.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,

(iii) the conversion of an existing building, and

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

As previously outlined the development as approved is for the erection of a five (5) storey residential flat 'housing' development plus basement car parking for the provisions of eleven (11) self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

The application is for the modification of an approved residential flat building. The modifications proposed do not materially alter the design of the development to an extent that the proposal deviates from the original assessment and conclusions made under DA367/2010/Part 3. The proposed modifications do not change the developments design quality in terms of the design quality principles. The relevant controls within the Apartment Design Guide are addressed below:

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Deep Soil Zones	Deep soil zones are to meet the following	Consistent

minimum requirements:

Site area	Minimum dimensions	Deep soil zone (% of site area)
Less than 650m ²	-	7%
650m ² – 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

The proposed modifications remain consistent with the overall planting areas approved on the site with the exception of approximately 12m² in the south-west corner of the site which was originally approved with a curved piled retaining wall to the basement.

This area has been excavated to the boundary and is included in the modifications for this application as part of the basement area. While the final treatment of this area is not identified to be changed, the original planting schedule approved is not sought to be amended. The Landscape Plans that form part of the original consent are retained.

Visual Privacy

Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

Consistent

The separation distances of the court approved development from the side boundaries with the residential flat building to the west are not further reduced by the proposed modifications.

The amendments to the rear of the development includes a reduction in distance from the face of the building at levels 1 and 2 to the northern boundary of the heritage substation from 4.765m to 3.2m (approx. 1.5m).

The setback of the development from the rear boundary with 27

		Ashburner Street is measured at 9.43m, which is 1.57m short of being consistent with the court setback measurement references within Condition 1. The setback is however consistent with the requirement of this criteria.
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	Consistent
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	Consistent
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building 	Consistent

	are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.													
	<ul style="list-style-type: none">A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	N/A												
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Consistent												
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent												
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Consistent The amendments to the finished floor levels within the building has ensured the development as modified will provide compliant floor to ceiling heights.
	Minimum ceiling height													
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent Each apartment is larger in size than the minimum internal area required.		
	Apartment type	Minimum internal area												
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>																
	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	Consistent															
	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	Consistent															
	<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	Consistent															
	<p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p>	Consistent															
	<p>Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.</p>	Consistent															
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	Consistent															
	<p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Consistent															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent</p> <p>The modifications proposed both at the front and rear of the development maintain the minimum area and width required.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Common Circulation	<p>The maximum number of apartments off a</p>	Consistent															

and Spaces	circulation core on a single level is eight.											
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A										
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Consistent Additional storage is provided within the basement area for each apartment.										
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²
	Dwelling Type		Storage size volume									
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
At least 50% of the required storage is to be located within the apartment.												
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent The proposed mechanical plant room at ground floor level is approximately 5.2m from the adjoining residential development adjacent to the western boundary of the site. While the location of this plant room meets the minimum setback, given its placement adjoining the driveway access, the vented wall for this infrastructure should be on the eastern side of the enclosure adjoining the open at-grade visitor parking to reduce the potential for noise from this plant travelling across the concrete driveway and impacting the adjoining residences. This could be included as a condition of consent should the application be considered worthy of approval.										
	Noise and Pollution	Siting, layout and design of the building is to	Consistent									

	minimise the impacts of external noise and pollution and mitigate noise transmission.																
Configuration																	
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent															
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent															
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent															
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent The proposed amendments to the roof responds to the constraints and concerns for this site to ensure overshadowing is not increased on the adjoining properties. The amended design includes a 14 degree chamfered roof along the western side to replace the cutout previously included in this side of the roof and approved by the court to minimise overshadowing on the neighbouring properties.															
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	N/A															
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium</td><td>8-12m</td><td>35m³</td><td>1,000mm</td><td>6m x 6m</td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium	8-12m	35m ³	1,000mm	6m x 6m	N/A
Plant type	Definition	Soil Volume	Soil Depth	Soil Area													
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent													
Medium	8-12m	35m ³	1,000mm	6m x 6m													

	Trees	high, up to 8m crown spread at maturity			or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent
	Shrubs			500-600mm	
	Ground Cover			300-450mm	
	Turf			200mm	
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				Consistent The apartment layouts and mix are considered to incorporate the Living Housing Guidelines.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				N/A
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.				N/A
Performance					
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?				Consistent
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?				Consistent
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of				Consistent

	waste and recycling?	
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

Adequate regard has been given to the matters raised under subclause (2). Notwithstanding the proposed amendments satisfactorily address the requirements of SEPP 65, the application is recommended for refusal.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 431991M_02 dated 8 June 2018).

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

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	31

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. A formal response was received raising no objections to the modification subject to conditions.

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	11m	17.25m	Roof -	No	Yes

Buildings:			17.048m Lift overrun - 18.814m	change 71%	No
Floor Space Ratio	FSR:0.75:1 (1072.4m ²)	FSR: 1.78:1 (1090.7m ²) (DA0367/2010/3)	FSR: 1.78:1	No change (3%)	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	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

4.3 Height of buildings

The underlying objectives of the standard pursuant to Clause 4.3 'Height of Buildings' of the Manly LEP 2013 are:

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

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

Comment:

The subject site currently has a valid development consent for a residential flat building with a maximum height of 17.25m. The proposed modifications seek to lower the overall roof height marginally to 17.048m with the additional inclusion of a lift overrun up to 18.814m. The modifications to the roof line, including the addition of the lift overrun are considered consistent with the approved development and not inconsistent with the prevailing building height surrounding the site or the desired future character of the locality.

(b) *to control the bulk and scale of buildings,*

Comment:

The changes to the roof line do not result in any perceptible additional bulk on the building. The development is consistent with this objective.

(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 changes to the building height and the roof form do not create any new or additional disruption of views. A view analysis has been provided and the proposal includes the removal of the corner balcony and planter box sections at the front elevation to Levels 3 and 4 which has been demonstrated to clear any building elements which would interrupt the existing view lines.

(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 applicant has provided revised shadow projections for the new roof line which demonstrate that the net impact on the shadow lines affecting 42-44 Victoria Parade is not worse than the approved design.

(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:

N/A

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Comment:

The development as approved by the NSW Land and Environment Court exceeds the building height requirement for the site by 6.25m.

4.6 Exceptions to development standards

The proposed modifications result in an additional breach to the maximum building height limit by the proposed lift overrun of 71% (noting the building height as approved provided a breach of 56.8%). The original development also approved a 3% breach to the floor space ratio requirement which is maintained by this modification.

In ‘Gann v Sutherland Shire Council [2008] NSWLEC 157’, the Court was prepared to distinguish an earlier line of authority, and hold that, since Clause 4.56 was a “free-standing” provision, it could be utilised to modify a consent even where (in that case) no Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that will result in a breach of the height control, without reference to SEPP 1 or Clause 4.6, relying instead on the “free-standing” power of Clause 4.56.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Clause 4.56 that is beyond the provisions of the planning controls. Whilst this modification application will result in new building elements with a height that exceeds the maximum permitted by Clause 4.3 of MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Clause 4.56 of the EP&A Act, which is a free-standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Clause 4.56 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant s.4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Clause 4.56 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure have been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings and the objectives of the R3 Medium Density Residential zone under MLEP 2013 and the variation can be supported on its merit.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 607m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	East: 9m	15.95m (RL21.2)	15.73m (RL20.98)	Yes, no greater than approved wall height
	West: 9m	15.95m	15.73 (RL20.98) m	Yes, no greater than approved wall height
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.25m, consistent with prevailing setback	Victoria Parade 7.22m, consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Secondary street frontage - East: 5.26m (based on wall height)	Nil	Nil	Yes, no change to approved
	West: 5.26m	Nil to basement 3.45m to face of building	Nil to basement 3.45m to face of building	Yes, no change to approved setback
4.1.4.4 Rear Setbacks	8m (substation)	Nil to basement 4.765m to building 5.5m to balcony	Nil to basement 3.2m to building L1 & L2 5.13m to balcony L1 & L2 3.5m to balcony L3 & L4	No
Schedule 3 Parking and Access	Total - 17 Spaces 14 x Residential 3 x Visitor	Total - 17 Spaces 14 x Residential 3 x Visitor	Total - 22 Spaces 17 x Residential (car stacker) 2 x Accessible (Basement) 3 x Visitor (Ground Level)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 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)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Description of non-compliance

The proposal is not considered to meet the objectives under Part 3.4 of the Manly DCP 2013, as the proposed additions to Level 1 and Level 2 at the rear of the development fails *"to protect the general amenity of adjoining and nearby properties"*.

The rear setback of the development was subject to detailed consideration as part of the Land and Environment Court proceedings. Out of these proceedings came a condition, Condition 1, which states:

"1. The rear wall (southern elevation) of the proposed building is to be setback a minimum of 11 metres from the rear (northern) boundary of the property known as 27 Ashburner Street Manly SP76027. The rear balconies are to be setback a minimum 9.5 metres from the rear (northern) boundary the property known as 47 (27) Ashburner Street, Manly being SP76027. Plans are to be suitably amended prior to the issue of the Construction Certificate."

Reason: To achieve closer compliance with Council's Development Control Plan for the Residential Zone Amendment 1 and reduce impacts on the amenity of adjoining properties."

This condition was specifically imposed to preserve the amenity of the residents in the adjoining building to the west.

Merit Consideration

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

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Designing for Amenity

a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.

b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.

c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.

The setback specified for the apartments and their balconies provided for a more acceptable separation for the occupants of the apartments to the south-west at No. 42-44 Victoria Parade, specifically those in the units at the rear, directly facing this area.

The proposed modifications will result in a building facade on the south western side of the development at Levels 1 and 2 which provides a 3.2m setback to the substation and a 9.43m setback to the northern boundary of 27 Ashburner Street. While the numerical difference is approximately 1.5m, the resulting built form will present a solid extension of the building measuring a height of 8.2m above the top of the ground floor level planter box in this location. The additional structure will adversely exacerbate the bulk and scale of the building from the adjacent Unit 5 and Unit 9 creating an adverse impact on the amenity of these properties.

3.4.1 Sunlight Access and Overshadowing

Concerns relating to overshadowing have formed an underlying issue of contention between the Applicant and the adjoining property owners to the west at 42-44 Victoria Parade.

The previous modification application (MOD2018/0294) was refused by the NBLPP on the basis that the "*information provided with the modification application is insufficient to enable a proper assessment of the shadow impacts on the adjoining property to the west...*"

In response to this refusal, the applicant engaged Urbaine Architecture to review the overshadowing

impacts of the development using the previous projections undertaken by Design Cubicle supported by new survey information. The outcome of comparing the previous shadow diagrams with the current ones identified discrepancies in the positioning of the proposed building and the neighbouring building in the Design Cubicle drawings.

The Architect states that *"using identical positioning of models, the shadow cast by the new proposal is contained within that cast by the previously approved DA"*. The comparison indicates that the location of the building at 42-44 Victoria Parade was higher and slightly further north than the current survey information provides.

The shadow drawing produced by Urbaine demonstrating a comparison between the original and proposed development using the Design Cubicle shadow drawings indicate that the amended roof form will result in a net reduction in the extent of shadow falling on the eastern facade of 42-44 Victoria Parade.

9am Mid Winter

The difference in the shadows at this time of day is identified between Level 3 and Level 4 in the centre of the building where there is a minor reduction in the shadow cast over part of one of the balconies and a small reduction of shadow to the doors of the Level 3 apartment below. Some minor additional overshadowing occurs at Ground Floor and Level 1 corner apartments toward the front northern end of the building where the shadow will extend into the balcony of these two apartments.

10am Mid Winter

At this time of day, the shadow line is reduced at Level 3 within the rear half of the building along the balcony level and some minor improvements within the northern half of the building where the shadow line is pulled back to the south.

11am Mid Winter

The changes in the shadow impact at this time of day is obvious in a number of areas. At the rear of the site, the balcony at the Level 2 apartment has a reduction in the shadow reaching the balustrade to both balconies. In addition, there is a minor improvement with additional sunlight access to four (4) of the windows at Level 2, some reduction in the centre of the building at Ground Floor level and some improvement to the shadow line on masonry sections of the building between the Ground Floor and Level 2.

Midday Mid Winter

The shadows indicated at midday are reduced to fall below the balcony of the Level 1 Unit 5 (at the rear of the building) with some additional sunlight access to the doors of the Ground Floor unit below. Some other minor reductions in the shadows extend along the previous shadow projections in this location.

After midday, the sun angle has moved over the top of the subject site and the adjoining property to the west so that the only shadows cast are self-shadowing from their own building.

The amended shadow diagrams and professional certification provided with this application has been accepted as a true projection of the overshadowing impacts. The proposed modifications based on the shadow analysis is considered consistent with the objectives of this control.

3.4.2 Privacy and Security

Description of Non-Compliance

The proposed modifications in relation to the extension of the building into the rear building setback is considered inconsistent with the objectives under Part 3.4.2 Privacy and Security of Manly DCP 2013.

Merit Consideration

The proposed modifications are considered against the relevant objectives of the control:

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

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

Comment:

While the design of the extended rear section of the building provides adequate visual protection through louvre screening and solid wall sections directly facing the adjoining neighbours, it is these elements of the design which will create unnecessary amenity impacts due to the bulk, scale and reduction of separation.

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

Comment:

The proposed extension of the rear of the development is considered inconsistent with this objective of the control as the modified setback will extend the bulk of the building approximately 8.2m in height a further 1.5m closer to the rear boundary with the heritage substation from 4.765m to 3.2m. The rear setback control specifies an 8m setback to this boundary which was reduced as part of the court proceedings that approved the original development. The small setback as approved provided the apartments in the south-western corner of the adjoining development at 42-44 Victoria Parade with a small amount of access to air and light through to Dungowan Lane. The extension of the building form in this location will erode this access to an even smaller amount and will exacerbate the bulk of the development in front of their only private open space and internal living areas.

3. To encourage awareness of neighbourhood security.

Comment

The development does not change the awareness of neighbourhood security.

3.4.3 Maintenance of Views

Description of non-compliance

Concerns were raised in the submissions about potential loss of views for the apartments located at the front of the adjoining development at 42-44 Victoria Parade (unit 12, level 2 and Unit 16, Level 3) by changes in the design. The applicant has provided a view analysis from the balcony area of these front north-east apartments which have an oblique view line across the front of the site to Manly Beach front. The front of the development has been slightly altered with the removal of the north-west balcony sections at Level 3 and 4 at the same angle as the view corridor.

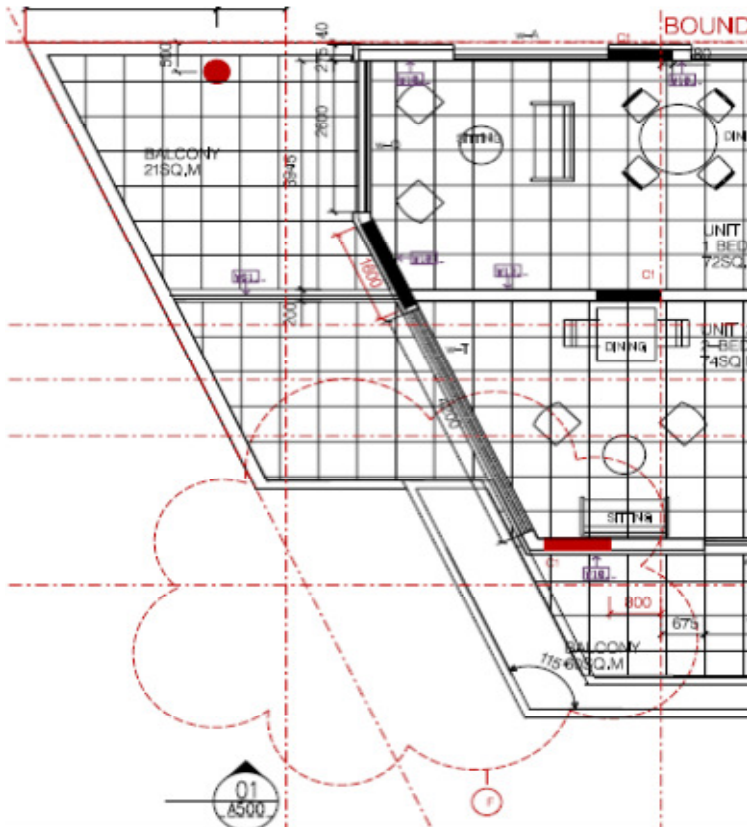
Merit consideration:

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposal with the amended balcony design provides for view sharing for the existing and future occupants of the adjoining apartments at the front of 42-44 Victoria Parade.



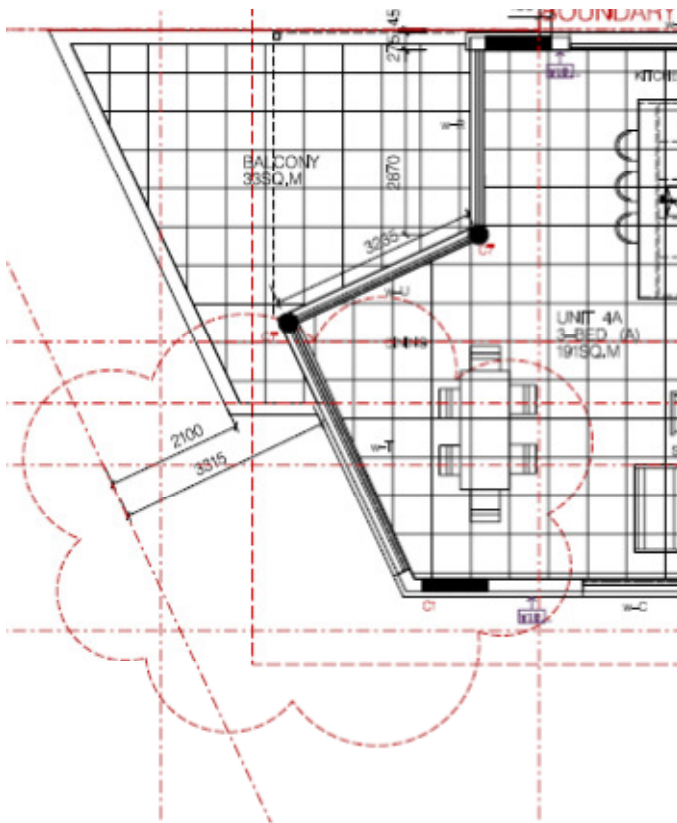


Figure 2 and 3 - Level 3 and Level 4 removal of corner balcony and relocation of planter previously within view corridor

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The existing views across the site are considered highly valued iconic views of Manly Beach and the land water interface in this location.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The views from these apartments are from the main private open space (balcony) and the main living and dining areas directly adjoining the balcony. The views are available from an oblique angle across the side and front of the property.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

The view analysis provided demonstrates that there is negligible impact on the views from these apartments with the new development suitably angled to protect these view corridors.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The modifications to the front of the development are considered reasonable in the context of their location. The shape of the building setback provides a design which protects the view corridors to the north-east at the end of Victoria Parade and is acceptable.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposed modifications are considered to improve the previous development's response to the view corridor across this site and is not considered to contribute to accumulated view loss creep.

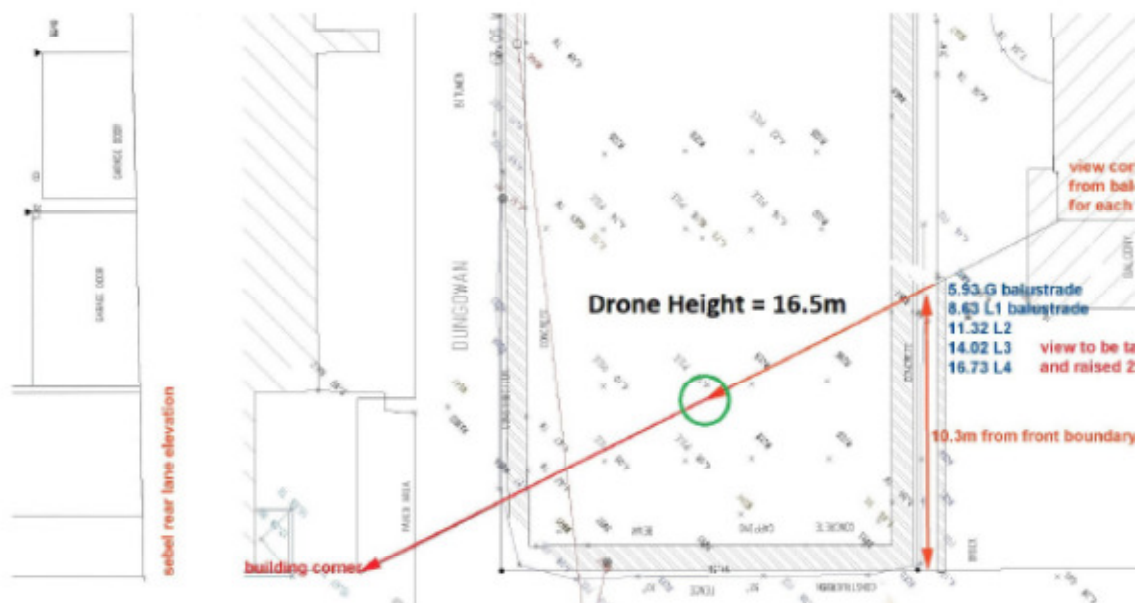


Figure 4 - View corridor analysis at Level 4 (source: Applicant View Analysis)

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 relation to concerns of view loss.

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

The proposed development includes a further reduction to the approved rear building setback. The proposal is considered inconsistent with the objectives of the control.

Merit Consideration:

The proposed modification is considered against the following requirements:

a. The distance between any part of a building and the rear boundary must not be less than 8m

Comment:

The approved development provided a setback to the rear boundary with the heritage substation to the south of 4.765m. The proposed modifications seek to reduce this setback to 3.2m measured to the face of the building at Level 1 and Level 2. The modifications result in further inconsistency with this requirement.

b. Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. The character of existing natural vegetated settings is to be maintained.

Comment:

The proposed development as approved included a corner of landscaping within the south-west corner. While the proposed modifications indicate this corner has been reclaimed as part of the basement structure, there is no modification sought to the approved Landscape Plan or relevant condition (Condition 92) within the consent.

c. On sloping sites, particularly where new development is uphill and in sensitive foreshore locations, consideration must be given to the likely impacts of overshadowing, visual privacy and view loss.

Comment:

The site is flat and not considered sloping.

d. Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.

Comment:

The development as approved does not provide any consistency in relating to the prevailing pattern of setbacks on the surrounding properties. The further reduction of the rear setback does not result in any apparent further material overshadowing in accordance with the revised shadow diagrams or create any further view loss, the extended building form is considered to exacerbate the visual privacy of the adjoining property to the west by creating an increased building bulk which encroaches on these properties outlook. Accordingly, the changes within the rear building setback are not supported and form a reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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, 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:

- Inconsistent 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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

This Clause 4.56 Modification Application has been assessed having regard to the reasons of refusal provided for MOD2018/0294, Section 4.15 of the Environmental Planning and Assessment Act, 1979, SEPP 65, MLEP 2013 and the relevant codes and policies of Council. This assessment has taken into consideration the modified plans, Modified Statement of Environmental Effects, other documentation supporting the application and public submissions.

The modified plans and supporting documentation have successfully resolved issues around the overshadowing impacts of the modified roof form. However, the concerns raised in relation to the additional building form extending into the rear setback at Level 1 and Level 2 are not considered suitably justified.

Twenty seven (27) submissions were received in response to the notification of the modified proposal. The issues raised in the submissions have been addressed in the 'Public Notification Section' of this report.

The modified proposal in relation to the extension of the rear of the development cannot be supported and fails to satisfy the rear setback controls and the established setback requirement for this site. Accordingly, it is recommended that the NBLPP refuse the application. 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 Modification Application No. Mod2019/0029 for Modification of Development Consent DA367/2010 granted for demolition works and construction of a residential flat building on land at Lot CP SP 10040,46 Victoria Parade, MANLY, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) of the Manly Development Control Plan .
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan .
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (rear) and Building Separation of the Manly Development Control Plan.
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest.