

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0734
---------------------	--------------

Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot B DP 360797, 30 A Addison Road MANLY NSW 2095 Lot LIC 30002346, 30 A Addison Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2022/0033 granted for Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Joseph Shamia
Applicant:	Chateau Constructions (Aus) Ltd

Application Lodged:	04/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	10/01/2023 to 25/01/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: %
Recommendation:	Approval

### EXECUTIVE SUMMARY

This modification application seeks consent for the Deletion of Condition 43 and the subsequent Modification of Condition 18 of the development consent granted for DA2022/0033. The modification sought to the proposed development seek to facilitate the removal and replacement of the group of trees *Group G1 - Thuja orientalis* along the battle-axe handle of the site.

The removal of these trees is requested by the applicant to facilitate the effective movement of trucks, construction materials and cranes along the battle-axe handle required to carry out demolition and construction works of the approved dwelling. The machinery to be used or the method of construction is tied closely to the constraints of the site as construction works are required to be carried out within a limited timeframe in response to the breeding season of Little Penguins, as enforced in conditions in the original consent. Underground services within the battle-axe handle of the site which are required to be

upgraded as part of the works also necessitates the removal of these trees.

The application is referred to the Development Determination Panel (DDP) due to the retention of these trees being endorsed by the Panel at the DDP meeting for the original Development Application held on 23 November 2022.

6 submissions were received in objection to the modification application, predominantly raising concerns regarding privacy. A detailed assessment has been conducted and the proposal is found to be consistent with the objectives of relevant standards and controls, with no matters that would warrant the refusal of the proposed development.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to recommended modified conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for the removal and replacement of the group of trees 'Group G1 - *Thuja Orientalis*' located along the north-eastern side of the battle-axe driveway handle of the site. Specifically, the proposal seeks consent for the deletion of condition 43 and amendment of condition 18 imposed under DA2022/0033.

The removal of the group of trees is required to facilitate construction access due to site constraints related to the width of the battle-axe handle and encroaching structures associated with the neighbouring property. As per the accompanying Survey Plan and documentation provided by Active Crane Hire and Chateau Architects + Builders, the limitations of the existing driveway does not allow for sufficient clearance to adequately cater for the size of vehicles necessary to carry out demolition and construction works at the rear portion of No.30A Addison Road.

Additionally, underground essential services are located below the group of trees along the battle-axe handle. An open trench is required to upgrade the services and, as per accompanying documentation supplied by Urban Arbour, it is not feasible to open trench and upgrade the services without the removal of the trees prior to the trenching works.

## **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone C4 Environmental Living

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Development Control Plan - 3.3.1 Landscaping Design

Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation

Manly Development Control Plan - 3.4.2 Privacy and Security

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

## SITE DESCRIPTION

<b>Property Description:</b>	Lot B DP 360797 , 30 A Addison Road MANLY NSW 2095 Lot LIC 30002346 , 30 A Addison Road MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site is a battle-axe allotment with a long access handle to the dwelling from Addison Road. The driveway runs between No.30 and No.28 Addison Road and is shared with No.28A Addison Road.</p> <p>The total area of the site is 682.9m<sup>2</sup> and it is zoned C4 Environmental Living under the MLEP 2013. The subject site contains an existing dwelling, detached garage, driveway, and swimming pool, with associated landscaping.</p> <p>The site slopes from the north western corner of the site to the south eastern corner of the site. The site contains a sewer main that runs to the north-west of the basement level media room, traversing the site from north to south. The site is bisected by the foreshore building line and overlooks Little Manly Cove.</p> <p>Adjoining and surrounding development comprises of detached dwelling houses, multi-dwelling housing and residential flat buildings.</p>

Map:



## SITE HISTORY

- **Development Application DA 4099/1991** – DA4099/91 Sec 102 Rec 17.11.92 – Determined 03/09/1991
- **Development Application DA 385/2001** – Alteration and/or Additions to existing Alterations & Additions to Dwelling – Approved 24/10/2001
- **Construction Certificate CC 385/2001** – Alteration and/or Additions to existing Alterations & Additions to Dwelling – Approved Under Delegation 13/09/2002
- **Development Application DA 341/2016** – Alterations and additions to the existing dwelling house – Approved 20/04/2017
- **Section 455 Modifications S96 341/2016 (part 2-modification)** – Section 96 to modify approved Alterations and additions to the existing dwelling house – Part 2 – Approved 27/07/2017
- **Pre-lodgment meeting PLM2021/0096** – Pre-lodgment meeting held between Council, the applicant and the project architect - Held on 13/05/2021
- **Development Application DA2022/0033** – Demolition works and construction of a dwelling house – Approved 23/11/2022

## 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 DA2022/0033, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>The removal of the trees is supported by Council's Landscape Officer and Bushland and Biodiversity Officer</li> <li>Replacement planting of trees is proposed at the conclusion of construction activities</li> <li>The required driveway width clearance to facilitate demolition and construction of the approved consent under DA2022/0033 is 3 metres. It is intended that the maximum available width along portions of the driveway is 2.4 metres due to the G1 group of trees and encroaching structures. The removal of the trees is considered reasonable and of minimal environmental impact in these circumstances given the constraints of the site to avoid potential damage to adjoining properties during the construction phase.</li> <li>The provision of essential services to the dwelling house is considered to carry more weight than the retention of the trees in this instance, noting that replacement planting will be undertaken after the trenching works have concluded to upgrade the services.</li> </ul>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0033 for the following reasons:</p> <ul style="list-style-type: none"> <li>No changes are proposed to the approved built form of the dwelling house</li> <li>No changes are proposed to the driveway location and vehicular access to the site will remain as per the existing arrangement</li> </ul>

<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>See discussion on "Notification &amp; Submissions Received" in this report.</p>

#### **Section 4.15 Assessment**

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition 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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/01/2023 to 25/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Adam Risely Linforth	1 / 28 Addison Road MANLY NSW 2095
Ludwik Linforth	1 / 28 Addison Road MANLY NSW 2095
Mr Lee Michael Johns Ms Michelle Lindsay Bolding	30 Addison Road MANLY NSW 2095
Ms Melissa Browning	3 / 28 Addison Road MANLY NSW 2095
Philomena Lee	Address Unknown
Mrs Gyongyver Endre	2 / 28 Addison Road MANLY NSW 2095

The following issues were raised in the submissions:

- Amenity impacts including privacy, solar access and shelter from wind
- Access to No.28 Addison Road
- Visual Impact
- Loss of wildlife habitat

The above issues are addressed as follows:

- **Amenity impacts including privacy, solar access and shelter from wind**

The submissions raised concerns that the removal of the group of trees along the driveway will adversely impact privacy between No.28A, 28B, 28C, 30, 28, and 30A Addison Road. Submissions also noted that the trees provide shading properties for No.30 Addison and No.28 Addison by absorbing direct sunlight in the afternoon and provide a buffer from strong winds.

Comment:



The planning principle established in *Super Studio v Waverley Council*[2004] NSWLEC91 determined that landscaping is given minor weight in the protection of privacy. It is also noted that the privacy screening provided by the existing trees is primarily enjoyed by No.28 and No.30 Addison Road, and is not related to potential overlooking from the proposed development at the subject site. A detailed merit assessment in relation to privacy has been undertaken in Section 3.4.2 of this report. The removal of the trees is not anticipated to have any unreasonable impacts on the level of solar access to surrounding properties, nor unacceptable wind effects, such as wind tunneling which are common place in high rise environments.

- **Access to No.28 Addison Road**

A submission raised concerns regarding the removal of stairs that provide access to No.28 Addison Road and works on the driveway will restrict pedestrian access to the building.

Comment:

No approval is granted under this consent for any works to No.28 Addison Road. Furthermore, subject to conditions of the original consent, construction works will be carried out in a manner that will ensure pedestrian and vehicular access to surrounding properties will be appropriately maintained and the works will not unreasonably interfere with the amenity expectations of surrounding residents.

- **Visual Impact**

The submissions raised concerns that the loss of trees will have a detrimental impact on the visual quality of the streetscape.

Comment:

Replacement planting of the trees at the conclusion of construction activities will reinstate appropriate landscaping to contribute towards an attractive streetscape. It is also noted that Addison Road itself contains an sufficient number of mature trees within the road reserve to enhance the streetscape.

- **Loss of wildlife habitat**

The submissions raised concerns that the loss of trees will adversely impact local wildlife.

Comment:

The application has been referred to Council's Bushland and Biodiversity Officer, who support the proposal subject to conditions in the original consent. It is considered that the the proposal is unlikely to impact upon the endangered little penguin and long-nosed bandicoot populations, or other native vegetation or wildlife habitat given the trees are an introduced species. It is noted that the subject trees are not known habitat trees.

## REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent DA2022/0033 to approve removal of existing side boundary tree planting, referred to as 'Group G1 - Thuja orientalis' in the Arborist Report.</p> <p>It is noted that the Landscape Referral during the development application assessment period raised no issues with removal of these trees as the construction impact of new services and aerial clearances for access works do not allow for the preservation of these trees. The approved Landscape Plans under the development consent include replacement planting.</p> <p>Landscape Referral raise no objections to the recommended modification of conditions as identified in the Statement of Modifications including deletion of Condition 43 and amendment of Condition 18.</p>
NECC (Bushland and Biodiversity)	<p>The proposed modification has been assessed against Manly LEP Clause 6.5 Terrestrial Biodiversity and the NSW Biodiversity Conservation Act. As per Biodiversity comments on the original application, the site is located within the Little Penguin Declared Area (formerly Critical Habitat) and habitat for the endangered population of Long-nosed Bandicoots at North Head. There are no objections to removal of the Thuja hedge, which is an introduced species and unlikely to provide habitat for native wildlife. Matters related to amenity and privacy values of the hedge shall be considered by the assessment officer and/or Landscape referrals body.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP (Resilience and Hazards) 2021

#### Chapter 2 – Coastal Management

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

#### Division 3 Coastal environment area

## **2.10 Development on land within the coastal environment area**

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

### Comment:

The proposed removal of trees is not anticipated to cause any adverse impacts on the coastal environment values or natural coastal processes.

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

### Comment:

As above, the proposal has been managed to avoid any adverse impacts referred to in subsection (1).

## **Division 4 Coastal use area**

### **2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - iii) foreshores,
    - iv) the visual amenity and scenic qualities of the coast, including coastal headlands,
    - v) Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and

- b) is satisfied that:
  - i) the development is designed, sited and will be managed to avoid an adverse
  - ii) impact referred to in paragraph (a), or
  - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not result in any detrimental impacts on the amenity or scenic qualities of the coast.

**Division 5 General**

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

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

Comment:

The proposal is not likely to cause increased risk of coastal hazards on the subject site or surrounding or adjoining land.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The original Development Application was referred to Council's Coast and Catchments team who found the proposal to be supportable in line with the relevant provisions of the *Coastal Management Act 2016* that applies to the land.

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

**Chapter 4 – Remediation of Land**

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

**Manly Local Environmental Plan 2013**

--	--

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

#### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.6m	Unaltered	24.7% (as approved)	As approved
Floor Space Ratio	FSR: 0.6:1	FSR: <0.6:1	Unaltered	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes

#### Detailed Assessment

##### Zone C4 Environmental Living

The application has been assessed against the objectives of the C4 Environmental Living zone as follows:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

#### Comment

The proposal will maintain the low density character of the residential area.

- To ensure that residential development does not have an adverse effect on those values.***

#### Comment

The proposal is not anticipated to adversely impact the ecological, scientific or aesthetic values of the locality.

- To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.***

#### Comment

Whilst the proposal involves the removal of trees, replacement planting is considered adequate to maintain the scenic qualities of the site.

- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.***

#### Comment

No changes are proposed to significant geological features on the site associated with the nearby foreshore. Replacement planting of trees will ensure there is no net loss of natural vegetation.

- ***To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.***

#### Comment

The proposed modification does not involve any works along the foreshore.

- ***To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.***

#### Comment

No changes are proposed to the height or bulk of the previously approved dwelling house under DA2022/0033. The proposal is compatible with surrounding land uses and sufficient vegetation on the subject site will be retained.

### 4.3 Height of buildings

The proposed modification application does not alter the numerically non-compliant building height approved under DA2022/0033. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

### Manly Development Control Plan

#### Built Form Controls

<b>Built Form Controls - Site Area: 334.5m<sup>2</sup></b>	<b>Requirement</b>	<b>Approved</b>	<b>Proposed</b>	<b>Complies</b>
4.1.2.1 Wall Height	N: 6.5m (based on gradient 0)	6.5m	Unaltered	Yes
	E: 6.5m (based on gradient 0)	5.8m	Unaltered	Yes
	S: 6.7m (based on gradient 1:30)	7m	Unaltered	As approved
	W: 6.7m (based on gradient 1:30)	6.5m	Unaltered	Yes
4.1.2.2 Number of Storeys	2	2	Unaltered	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.8m	Unaltered	Yes
	Pitch: maximum 35 degrees	8 degrees	Unaltered	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	12.4m	Unaltered	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: Semi-detached dwelling	Nil to boundary wall	Unaltered	Yes
	W: 2.2m (based on wall	Dwelling:	Unaltered	As

	height of 6.7m)	1.2m Patio: Nil		approved
	Windows: 3m	1.2m	Unaltered	Yes
4.1.4.4 Rear Setbacks	8m	17.3m	Unaltered	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (184m <sup>2</sup> )	46.4% (155.3m <sup>2</sup> )	Unaltered	As approved
	Open space above ground <25% of total open space	<25%	Unaltered	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (54.4m <sup>2</sup> )	57.8% (89.9m <sup>2</sup> )	Unaltered	Yes
	2 native trees	2 trees	2 trees	Yes
4.1.5.3 Private Open Space	18m / 12sqm per dwelling	> 18m <sup>2</sup>	Unaltered	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
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	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
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment

### **3.3.1 Landscaping Design**

The proposal involves the removal of the group of trees along the battle-axe handle of the site.

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

#### Detailed Assessment

- ***Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.***

#### Comment:

The proposal involves appropriate tree replacement planting of the same *Thuja* species and additional planting of *Agapanthus*.

- ***Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.***

#### Comment:

The application has been referred to Council's Bushland and Biodiversity Officer who found that the proposal will not have any unreasonable impacts on native flora and fauna.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

### **3.3.2 Preservation of Trees or Bushland Vegetation**

#### Detailed Assessment

Due to the proposed removal of trees the application has been assessed against Clause 3.3.2 of the DCP. The control stipulates that where the applicant demonstrates that no reasonable alternative design exists and a tree must be removed, suitable compensatory tree planting is required. Details including proposed species and the location of replacement planting has been provided as per the Landscape Plan accompanying DA2022/0033 which demonstrates replacement planting of the same *Thuja orientalis* species. The application has been referred to Council's Landscape Officer who is supportive of the application.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant requirements of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

### **3.4.2 Privacy and Security**



The group of trees referred to as Group G1 - *Thuja orientalis* provides a degree of privacy between dwelling houses surrounding No.30A Addison Road. The properties that primarily benefit from the privacy screen planting provided by the group of trees to be removed are No.28 and No.30 Addison Road. Submissions received note that overlooking will occur to and from the living areas, bedrooms and private open space of No.28 and No.30 Addison Road.

It should be noted that the group of trees do not provide privacy screening measures from any overlooking arising the proposed development at No.30A Addison Road approved under DA2022/0033.

Detailed assessment:

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

***Objective 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; and***
- ***mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.***

Comment:

The judgment of *Super Studio v Waverley Council*[2004] NSWLEC91 provides an applicable planning principle in relation to the use of landscaping to protect privacy. The Court stated, "where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck." Therefore, reliance upon landscaping on the land of a neighbouring property for privacy should not be considered a primary safeguard against overlooking in this instance. As such, it is the responsibility of adjoining property owners to take measures to ensure their own privacy through more certain and permanent solutions, for example through the installation of blinds or privacy screens within the individual lots.

It is also noted that proposed replacement planting is anticipated to reinstate the existing level of screen planting privacy over time.

***Objective 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 modification application does not introduce any elements on the subject site that would result in any detrimental overlooking impacts to or from habitable rooms and private open space. The proposed removal of the group of trees to facilitate construction works is not anticipated to result in any adverse impacts on access to light and air.

***Objective 3) To encourage awareness of neighbourhood security.***

Comment:

The proposal will not compromise neighbourhood security or casual surveillance of the street frontage.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposed modification application does not alter the numerically non-compliant wall height on the southern elevation approved under DA2022/0033. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

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

The proposed modification application does not alter the numerically non-compliant setback to the western side boundary approved under DA2022/0033. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

#### **4.1.5 Open Space and Landscaping**

The proposed modification application does not alter the numerically non-compliant building open space area on the subject site that was approved under DA2022/0033. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

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

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

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

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

## **PLANNING CONCLUSION**

This proposal for the deletion and modification of conditions in the development consent for DA2022/0033 has been referred to the Development Determination Panel (DDP) due to the Panel endorsing the *Group G1* trees to be retained at the DDP meeting held on 23 November 2022 for the original Development Application.

When assessed against the MLEP 2013 and MDCP 2013 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the removal of these trees are acceptable. The concerns raised in the objections have been addressed and resolved through the requirement for replacement planting at the conclusion of construction activities.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0734 for Modification of Development Consent DA2022/0033 granted for Demolition works and construction of a dwelling house on land at Lot B DP 360797,30 A Addison Road, MANLY, Lot LIC 30002346,30 A Addison Road, MANLY, subject to the conditions printed below:

### **A. Modify Condition No.18 - Tree Removal Within the Property to read as follows:**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment): trees G1, 4, 6, 8 and 9, a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Exempt Species (by species type or by height) as listed in the Development Control Plan do not require Council consent for management or removal, and the following exempt species are identified in the Arboricultural Impact Assessment: trees 5 and 7.

Reason: To enable authorised development works

**B. Delete Condition No.43 - Tree Retention to read as follows:**

DELETED

**C. Modify Condition No.34 - Landscape Completion to read as follows:**

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) two (2) native tree planting species selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or Council's Tree Guide, shall be planted at a minimum preordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- iii) replacement planting of the *G1* group of trees is to be carried out in accordance with the approved Landscape Plan, except where varied by i) or ii) above.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.