

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0603
<b>Responsible Officer:</b>	Clare Costanzo
<b>Land to be developed (Address):</b>	Lot 1 SP 31425, 1 / 9 Eustace Street MANLY NSW 2095 Lot 5 SP 31425, 5 / 9 Eustace Street MANLY NSW 2095 Lot 5 SP 31425, 5 / 9 Eustace Street MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA2021/2409 granted for alterations and additions to a residential flat building
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Gary Paul McInnes Daniel Robert Morris Geraldine Woo Proprietors of Strata Plan 31425
<b>Applicant:</b>	Cradle Design

<b>Application Lodged:</b>	28/10/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The modification comprises of the following:

- Unit 1 works are to be deleted from the approved works (a separate development application will be submitted for Unit 1 works)
- Unit 5 works to remain as approved
- Removal of Condition 7 - Fire Resistant Construction as it relates to Unit 1 works and it is now no longer required
- Amendment to any other conditions referencing Unit 1 to reference Unit 5 only

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings  
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

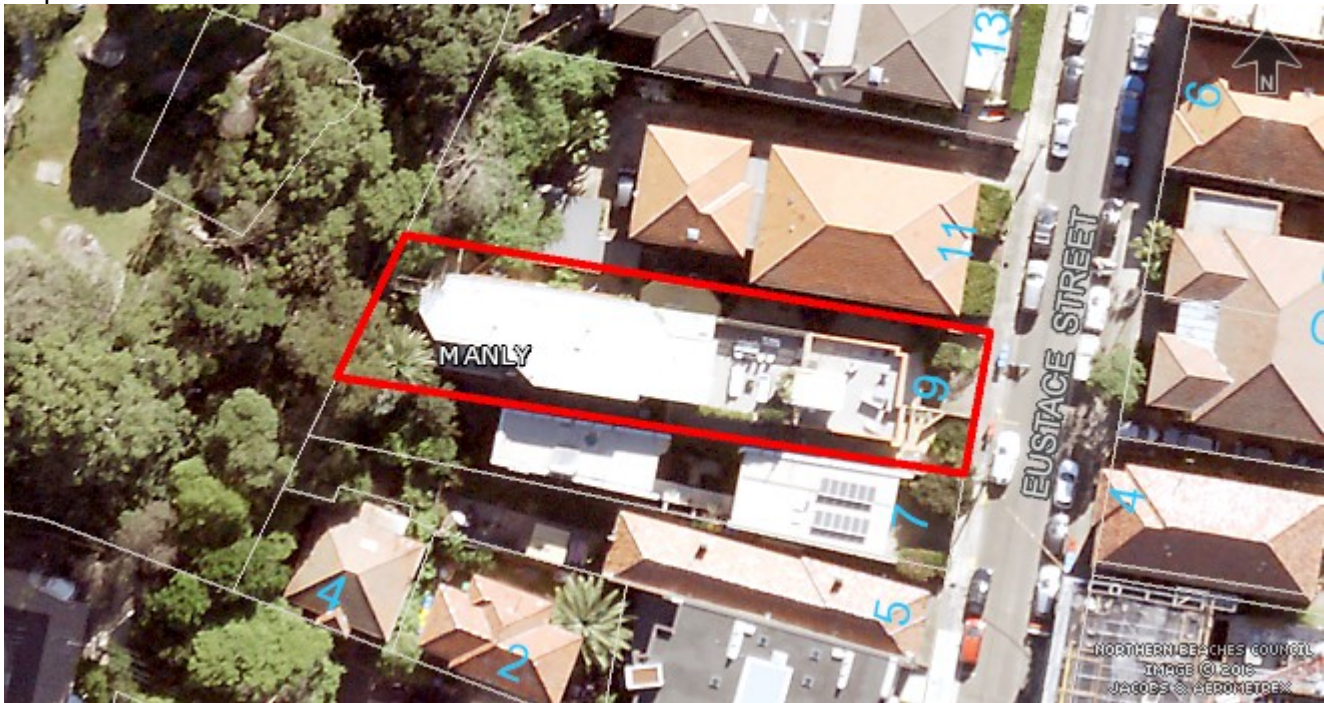
## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 SP 31425 , 1 / 9 Eustace Street MANLY NSW 2095 Lot 5 SP 31425 , 5 / 9 Eustace Street MANLY NSW 2095 Lot 5 SP 31425 , 5 / 9 Eustace Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site is on the western side of Eustace Street between West Esplanade and Sydney Road. The surveyed site area is 697.4m<sup>2</sup> for the land area and the site contains a Strata Title apartment building containing 8 units. The subject development work for this application is associated with Unit 5 that is located on Level 3 and Level 4 respectively.</p> <p>The site falls from west to east, The existing strata apartments sit above a basement car park and steps up from Eustace Street to a public reserve behind.</p> <p>The surrounding neighborhood is a mix of multi-residential apartments and mixed use development of varying heights, generally 3 to 5 storeys.</p> <p>Manly Wharf and foreshore are within 100 metres (m) south of the property, Manly oval to the north and Manly CBD to</p>

the east. The west boundary is council reserve hillside land with pathway connections to Rowe Street and Tower Street. No. 9 Eustace has a back gate access from the public footpath.

Vehicular and pedestrian access is currently available via Eustace with the existing driveway running perpendicular to Eustace Street. The main pedestrian entry is located along the front boundary.

Map:



## SITE HISTORY

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

- Development Application DA381/90 for alterations and additions to a residential flat building was approved by Council 24 May 1990
- Development Application DA0039/2012 for alterations and additions to a residential flat building was approved by Council on 13 April 2012
- Development Application DA0241/2016 for alterations and additions to a residential flat building (Unit 7) was approved by Council on 28 September 2016
- Development Application DA2021/2409 for alterations and additions to a residential flat building was approved by the Northern Beaches Local Planning Panel on the 20 April 2022

The subject modification application did not require notification in accordance with the Northern Beaches Community Participation Plan.

## 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 DA2021/2409, 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 modification directly relates to works approved in the previous development application and will result in substantially the same development</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 DA2021/2409 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The works related directly to Unit 5 and do not comprise of any physical works</li> <li>• It is not expected there will be any environmental impacts above those considered in the original development application</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p>	<p>The application did not require public exhibition in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application as the application did not require public notification.

### Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p>



Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clauses 62</u> and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 (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 was not notified.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to the deletion of Condition 7 of DA2021/2409 which relates to the proposed building works for Unit 1. It is noted that the approved works for Unit 1 are to be deleted from the Development Approval and that the works proposed for Unit 5 will remain as approved.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</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 65 - Design Quality of Residential Apartment Development

The modification application remains consistent with the assessment conducted in the original development application and therefore no further assessment required.

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

A BASIX certificate has been submitted with the application (see Certificate No. A433084 dated 1 October 2021).

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

#### SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

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

### Manly Local Environmental Plan 2013

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

#### Principal Development Standards

There are no changes to the principal development standards as previously approved and as such no further assessment is required.

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
4.6 Exceptions to development standards	N/A

#### Detailed Assessment

#### 4.3 Height of buildings

There are no changes to the maximum building height as approved and as such no further assessment is required.

#### 4.4 Floor space ratio

There are no changes to the floor space ratio as approved and as such no further assessment is required.

### Manly Development Control Plan

#### Built Form Controls

There are no changes to the built form controls as previously approved and as such no further assessment is required.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	N/A	N/A
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	N/A	N/A
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	N/A	N/A
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.7 First Floor and Roof Additions	N/A	N/A
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

## CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;

- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0603 for Modification of Development Consent DA2021/2409 granted for alterations and additions to a residential flat building on land at Lot 1 SP 31425,1 / 9 Eustace Street, MANLY, Lot 5 SP 31425,5 / 9 Eustace Street, MANLY, Lot 5 SP 31425,5 / 9 Eustace Street, MANLY, subject to the conditions printed below:

### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-002 Site Plan Rev B	24 October 2022	Cradle Design
DA-501 Unit 5 Existing & Demolition Plans Rev B	24 October 2022	Cradle Design
DA-502 Unit 5 Existing & Demolition Plans Rev B	24 October 2022	Cradle Design
DA-503 Unit 5 Floor, Roof & Stormwater Plans Rev B	24 October 2022	Cradle Design
DA-504 Unit 5 East Elevations Rev B	24 October 2022	Cradle Design
DA-505 Unit 5 North & South Key Elevations Rev	24 October 2022	Cradle Design

B		
DA-506 Unit 5 North & South Unit 5 Elevations Rev B	24 October 2022	Cradle Design
DA-507 Unit 5 Sections A & B Rev B	24 October 2022	Cradle Design
DA-514 Unit 5 Finishes Rev B	24 October 2022	Cradle Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A433084	1 October 2021	Cradle Design

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

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

#### **B. Modify Condition 4 - Policy Controls to read as follows:**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$1,912.8 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$191,280.00. The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid. The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

#### **C. Delete Condition 7 - Fire Resisting Construction to read as follows:**

The proposed building works associated with the dining room/kitchen extension is required to comply with Specification C1.1 Fire-resisting construction clause 2.1 of the Building Code of Australia. Details demonstrating compliance from an appropriately qualified Registered Certifier\* are to be provided prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

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

**Signed**



**Clare Costanzo, Planner**

The application is determined on 07/11/2022, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**