

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0713
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<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 2 DP 325220, 16 Addison Road MANLY NSW 2095 Lot LIC 30003605, 16 Addison Road MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA2021/1408 granted for Demolition works and construction of a dwelling house including a boatshed
<b>Zoning:</b>	Manly LEP2013 - Land zoned C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Sarah Penelope Joyce Nicholas John Fairfax
<b>Applicant:</b>	Sarah Penelope Joyce

<b>Application Lodged:</b>	20/02/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	27/02/2024 to 12/03/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.56 of the EP&A Act seeks to modify the approval issued under development consent DA2021/1408, granted consent by the Land and Environment Court for demolition works and construction of a dwelling house including a boatshed.

The modifications proposed include:

- External window and door alterations.
- Solid fuel heater to replace approved gas fireplace.
- Extension of the lower floor to allow for greater store and plant room.
- Carport alterations.

- Internal alterations.
- Skylight alterations.
- Solar panels added to roof; and
- Height of landscape rock wall increased.

## 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 S4.15 Assessment  
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area  
 Manly Local Environmental Plan 2013 - 6.12 Essential services  
 Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 325220 , 16 Addison Road MANLY NSW 2095 Lot LIC 30003605 , 16 Addison Road MANLY NSW 2095
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment located on the southern side of Addison Road, Manly  The site is a battle-axe allotment off Addison Road, Manly. The site has a surveyed area of 543.8m <sup>2</sup> .  The site is located within the C4 Environmental Living zone and accommodates a dwelling house and garage.

The site slopes from north-west to south-east corner and includes a approximate crossfall of 12m.

The site is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins in Manly.

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential accommodation including one and two storey dwelling houses and residential flat buildings.

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:

**DA2021/1408** - Demolition works and construction of a dwelling house including a boatshed. (Approved Land and Environment Court (LEC) 24 August 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 DA2021/1408, 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 DA2021/1408.
(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 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	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(c) it has notified, or made reasonable attempts to notify,	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who

Section 4.56- Other Modifications	Comments
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	made a submission in respect of DA2021/1408.
(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 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the proposed solid fuel heater.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 2001: 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&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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 interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 27/02/2024 to 12/03/2024 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 3 submission/s from:

Name:	Address:
Evolution Planning Pty Ltd	Po Box 309 FRENCHS FOREST NSW 1640
Ms Victoria Liew-Dwyer	18 Addison Road MANLY NSW 2095
Ms Ann Frances James	12 Addison Road MANLY NSW 2095

The following issues were raised in the submissions:

- **Solid fuel heater**

The above issues are addressed as follows:

- **Solid fuel heater**

The submissions have raised concern with regard to the potential impact of the solid fuel heater proposed under this modification application including whether the solid fuel heater can comply with the relevant Australian Standard.

### Comment:

The application was referred to Council's Environmental Health Officer for comment in relation to the solid fuel heater. Further information was requested in the form of detailed architectural plans was requested from the applicant to allow for a full assessment of the impacts of the proposed solid fuel heater. The amended architectural plans demonstrate that compliance with *Australian Standard 2918:2018 Domestic Solid Fuel Burning Appliances – Installation* can be achieved, and as such is supported, subject to conditions. The proposed solid fuel heater will not result in unreasonable impacts on adjoining residential properties.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><b>General Comments</b></p> <p>This applicant for a new dwelling identified the installation of a fireplace. Insufficient information has been provided to assess the potential impact. An email was issued to the applicant 27 March 2024 requesting further information to demonstrate compliance with the relevant Australian Standard.</p> <p>The email stated:</p> <p>Hi Michael</p> <p>You have advised that the property owner wishes to install a wood fire heater in their proposed residential dwelling at 16 Addison Road, Manly. There is concern that the smoke from the chimney flue may have a negative impact on the neighbouring property – 14A Addison Road, Manly. As such Council requires further information from the applicant to demonstrate the proposed wood fire heater will comply with <i>Australian Standard 2918:2018 Domestic Solid Fuel Burning Appliances – Installation</i>.</p> <p>Can the applicant please provide architectural plans demonstrating compliance with the below information from the Australian Standard 2918:2018 and the flues location in relation to the neighbouring property.</p> <p><i>The Flue exit shall be located outside the building in which the appliance is installed so that –</i></p> <ol style="list-style-type: none"> <li>1. <i>the flue pipe shall extend not less than 4.6m above the top of the floor protector;</i></li> <li>2. <i>the minimum height of the flue system within 3m distance from the highest point of the roof shall be 600mm above that point as shown in Figure 4.8;</i></li> <li>3. <i>the minimum height of the flue system further than 3m from the highest point of the roof shall be 1000mm above roof penetration as shown in Figure 4.8;</i></li> <li>4. <i>no part of any building lies in or above a circular area described by a horizontal radius of 6m about the flue system exit;</i></li> <li>5. <i>termination of the flue system does not constitute a risk of fire to heat sensitive materials; and</i></li> <li>6. <i>there is no foreseen risk of penetration of flue gases through nearby windows or other openings, fresh air inlets, mechanical</i></li> </ol>

Internal Referral Body	Comments
	<p style="text-align: center;"><i>ventilation inlets or exhausts, or the like.</i></p> <p>7.</p> <p>Environmental Health recommends refusal until further information is received and an adequate assessment can be undertaken.</p> <p>UPDATED REFERRAL</p> <p>Amended architectural plans have been provided demonstrating compliance with Australian Standard 2918:2018 Domestic Solid Fuel Burning Appliances – Installation can be achieved.</p> <p>Environmental Health recommends approval subject to conditons</p>
Landscape Officer	<p>The application is for the modification of development consent DA2021/1408 as described in reports and as illustrated on plans. Landscape Referral in review consider the landscape outcomes of the development consent remain, and it is noted that the proposed modification does not seek to modify the approved landscape plan and the imposed conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016 (BC Act)</li> <li>• NSW Biodiversity Conservation Regulation 2017 (BC Regulation)</li> <li>• Manly LEP Clause 6.5 (Terrestrial Biodiversity)</li> <li>• Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands)</li> <li>• Manly DCP Clause 3.3.1.a.v (Landscaping Design – bandicoot habitat)</li> </ul> <p>The subject site is identified as being within the NSW Biodiversity Values Map (BV Map) and includes areas of the 'Little Penguin Declared Area of Outstanding Biodiversity Value' as declared under the BC Act. Accordingly, the DA has been accompanied by a Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor in accordance with the NSW Biodiversity Assessment Method.</p> <p>The proposed modifications relate to previously disturbed areas and internal layouts which are unlikely to present any additional impacts to the BV Map. A letter prepared by the engaged accredited assessor stipulates that "none of these changes will have any additional impact on the surrounding environment. The recommendations made in the Biodiversity Development Assessment Report, prepared by GIS Environmental Consultants (4/7/21) are still relevant."</p> <p>As the BAM Biodiversity Credit Calculator has not been re-run, the BDAR addendum that has been submitted with the modification application does not satisfy the submission requirements under the</p>

Internal Referral Body	Comments
	<p>BC Act. However, in this instance rather than require resubmission of the BDAR, Council has relied upon section 7.17 2.(c) of the BC Act, namely being satisfied that the proposed modification will not increase the impact on biodiversity values.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact. No additional Biodiversity conditions are recommended.</p>
NECC (Coast and Catchments)	<p>The proposal seeks approval for modification of development consent DA 2021/1408 granted for demolition works and construction of a dwelling house including a boatshed</p> <p>The proposed modifications predominately relate to minor changes, exterior openings, internal layout of the dwellings and carport.</p> <p>The subject property is located within the 'Coastal Environment Area' and the 'Coastal Use Area' maps of the Coastal Zone, Sydney Harbour Foreshores and Waterways Area and also in the Foreshore Scenic Protection area, In addition, the subject property is affected by Estuarine Hazards. Part of the subject property is within the 'Foreshores Building Line'</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>§ Supplied plans and reports, including; <ul style="list-style-type: none"> <li>o Statement of Modifications prepared by KN Planning Pty. Ltd. dated 20 October 2023</li> </ul> </li> <li>§ Coastal Management Act 2016</li> <li>§ State Environmental Planning Policy (Resilience &amp; Hazards) 2021 Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021 Estuarine Risk Assessment Study for the Middle Harbour (2022) Sydney Harbour Foreshores and Waterways Area DCP</li> <li>§ Relevant LEP and DCP Clauses</li> </ul> <p>The application proposes no new modifications within the foreshores area.</p> <p>There appears to be risk in terms of estuarine hazards affecting the subject site. A draft Estuarine Planning Level is available however is</p>

Internal Referral Body	Comments
	<p>not considered relevant as proposed modifications are located above the EPL.</p> <p>The objectives and requirement of the CMA 2016, SEPP -R &amp; H 2021 and relevant LEP and DCP Clauses have been met.</p> <p>The proposed modifications appear consistent with the design intent of the original proposal.</p> <p>No conditions in additions to those for the original development application are considered necessary</p>
NECC (Development Engineering)	The proposal is for the modification of Consent DA2021/1408. No objections to approval.
NECC (Water Management)	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Northern Beaches Water Management for Development Policy (WMD Policy), and;</li> <li>• Relevant LEP and DCP clauses;</li> </ul> <p>On review, no objections regarding water management.</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site is affected by a heritage item, listed in Schedule 5 of Manly Local Environmental Plan 2013:</p> <p><b>Item I1 - Harbour foreshores</b> - Manly municipal area boundary adjacent to the Harbour</p>
	Details of heritage items affected
	<p>Details of the heritage item as contained within the Manly Heritage Inventory are:</p> <p><b>Item I1 - Harbour foreshores</b></p> <p><u>Statement of Significance</u> Natural landscape type - Aesthetic.</p> <p><u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</p>
Other relevant heritage listings	

Internal Referral Body	Comments		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	<b>Consideration of Application</b>		
<p>The proposal seeks consent to modify the consent granted by the LEC to DA2021/1408 for the demolition of an existing single storey dwelling and the construction of a three storey dwelling with a carport and a boatshed. This application involves changes to the internal layout, enlarged openings to the side walls, extended excavation to the basement and addition of PV solar panels to the roof. No concerns have been raised by Heritage to the proposed changes as they are considered to not further impact the significance of the heritage listed foreshores, except the additional solar panels which may be visible from the harbour.</p> <p>Therefore, no objections are raised on heritage grounds subject to one condition, requiring the installation details of the solar panels, to ensure the visibility from the harbour is minimised.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013</u>            Is a Conservation Management Plan (CMP) Required? No            Has a CMP been provided? N/A            Is a Heritage Impact Statement required? No            Has a Heritage Impact Statement been provided? N/A</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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1183912S\_04 dated 4 December 2023).

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

### SEPP (Biodiversity and Conservation) 2021

#### Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

#### Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

##### 6.6 Water quality and quantity

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—*

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

#### Comment:

The proposal has been reviewed by Council's Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

#### 6.8 Flooding

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.*

*(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—*

*(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*

*(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

### **6.9 Recreation and public access**

*(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—*

*(a) the likely impact of the development on recreational land uses in the regulated catchment, and*

*(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

*(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—*

*(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*

*(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*

*(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

The proposed development will not have any impact upon public access along the foreshore. The proposed works are located entirely within the subject site.

### **6.10 Total catchment management**

*In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.*

Comment:

The proposal has been reviewed by Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice

provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

## **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 2 Coastal Vulnerability Area**

##### **2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
  - i) is not likely to alter coastal processes to the detriment of the natural environment or
  - ii) other land, and
  - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

#### **Comment:**

The proposed modification to the approved dwelling house is not likely to alter coastal processes, increase coastal hazards or reduce public amenity to the foreshore area.

#### **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 proposal will not adversely nor unreasonably affect the biophysical, hydrological and ecological environments. Existing public access to the foreshore area will not be affected by the proposal. The application has been referred to the Aboriginal Heritage Office and is not anticipated to have any impact on Indigenous heritage.

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

Comment:

The siting of the proposed development will not have foreseeable adverse impacts with regard to the matters raised within clause (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,
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, 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 impact referred to in paragraph (a), or
    - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
    - iii) 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 building position is within an established urban zone and does not create any adverse environmental impacts on the coastal environment or unreasonable visual impacts on public places.

**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 will not impact on the natural foreshore processes or cause environmental harm.

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	8.3m	8.3m	-	Yes
Floor Space Ratio	FSR:0.6:1 (326.28sqm)	FSR: 0.582:1 (317sqm)	FSR: 0.589:1 (320.5sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **6.4 Stormwater management**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

*(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

*(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*

Comment: On-site stormwater retention has been incorporated into the development.

*(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

#### **6.9 Foreshore scenic protection area**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

*(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including*

- overshadowing of the foreshore and any loss of views from a public place to the foreshore,*  
*(b) measures to protect and improve scenic qualities of the coastline,*  
*(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*  
*(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed modifications do not have an unreasonable impact upon the scenic or visual amenity of the harbour.

### 6.10 Limited development on foreshore area

There are no changes to the approved works in the foreshore area.

### 6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*  
*(b) the supply of electricity,*  
*(c) the disposal and management of sewage,*  
*(d) stormwater drainage or on-site conservation,*  
*(e) suitable vehicular access.*

Comment:

Access to the services listed about will be retained as part of this modification application.

### Manly Development Control Plan

#### Built Form Controls

<b>Built Form Controls - Site Area: 543.8sqm</b>	<b>Requirement</b>	<b>Approved</b>	<b>Proposed</b>	<b>Complies</b>
4.1.2.1 Wall Height	East 7.5m (based on gradient 1:6)	East 6.4m - 7.9m	No change	N/A
	West: 7.15m (based on gradient 1:9.5)	West 5.8m - 7.4m	No change	N/A
4.1.2.2 Number of Storeys	2	3	No change	N/A
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	Garage amendment - 0.5m	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	N/A, Battle-axe allotment	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	<b>East</b> First floor -2.13m - 2.63m	<b>East</b> Dwelling First floor- 1.5m – 3.0m Dwelling lower	No change	N/A

	<b>West</b> First floor - 1.93m - 2.46m	<b>West</b> Dwelling First floor- 1.8m - 3m	No change	N/A
	Windows: 3m	1m - 3.0m	1.4m (window alterations)	No
4.1.4.4 Rear Setbacks	8m	7.2m	No change	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (299.09sqm) of site area	37.25% (202.6)sqm	No change	N/A
	Open space above ground 25% of total open space	0sqm	No change	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	36.1% (73.2sqm)	No change	N/A
	3 native trees	4 trees	No change	N/A
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	No change	N/A
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	No street frontage	No change	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No change	N/A

### 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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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)	Yes	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	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment

#### **3.4.4 Other Nuisance (Odour, Fumes etc.)**

The proposed new dwelling comprises a single solid fuel fireplace, with flues located in to the western side of the dwelling. The application has demonstrated that the use of these fireplace will not result in unreasonable impacts upon the amenity of adjoining dwellings, and compliance with the relevant Australian Standards can be achieved. As discussed by Council's Environmental Health Officer, the inclusion of solid fuel fireplaces is supported in this regard, subject to conditions.

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

##### Description of non-compliance

Clause 4.1.4.2 of the MDCP requires windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries. The proposed window along the western elevation as setback 1.4m from the side property boundary, non-compliant with the numeric control.

##### Merit consideration:

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

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

##### Comment:

The proposed window alterations are located on the approved western wall. The window alterations are not deemed to impact to have any desirability impact upon the streetscape.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will not lead to any loss of significant view. There is no significant impact on the streetscape, subject to conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed dwelling house will not result in any unreasonable impacts upon adjoining properties

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

There are adequate deep soil zones in the front and rear setbacks to provide suitable planting as shown in the landscape plan.

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

Comment:

The subject site is not located in a bush fire prone area.

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.

## **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. Mod2023/0713

for Modification of Development Consent DA2021/1408 granted for Demolition works and construction of a dwelling house including a boatshed on land at Lot 2 DP 325220, 16 Addison Road, MANLY, Lot LIC 30003605, 16 Addison Road, MANLY, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-401440 - MOD2023/0713	The date of this notice of determination	Modification of Development Consent DA2021/1408 granted for Demolition works and construction of a dwelling house including a boatshed  Add Condition 23A - Details of solar panels Add Condition 45A - Installation and certification of solid/fuel burning heater Add Condition 45B - Certification of solid fuel burning heaters

### Modified conditions

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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
1.2	B	Site Plan	Patterson	18 April 2024
1.3	B	Boat Shed Plan	Patterson	18 April 2024
1.4	B	Lower Floor Plan	Patterson	18 April 2024
1.5	B	Ground Floor Plan	Patterson	18 April 2024
1.6	B	First Floor Plan	Patterson	18 April 2024
1.7	B	Roof Plan	Patterson	18 April 2024
2.1	B	Elevations	Patterson	18 April 2024
2.2	B	Elevations	Patterson	18 April 2024
3.1	B	Sections	Patterson	18 April 2024
3.2	B	Sections	Patterson	18 April 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 1183912S_04	4	Certified Energy 1	4 December 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**B. Add Condition 23A - Details of solar panels - to read as follows:**

The installation details of the proposed solar panels including the angles and elevations from the roof surface should be provided to Council's Heritage Advisor for approval prior to the issue of the Construction Certificate.

Reason: To ensure that the visibility of the solar panes from the harbour foreshore is minimised.

**C. Add Condition 23B - Maximum height of solid fuel heater- to read as follows:**

The solid fuel heater is not to extend beyond 1m above the approved parapet.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the terms of this consent.

**D. Add Condition 45A - Installation and certification of solid/fuel burning heater - to read as follows:**

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

**E. Add Condition 45B - Certification of solid fuel burning heaters - to read as follows:**

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

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

**Signed**



**Maxwell Duncan, Principal Planner**

The application is determined on 03/06/2024, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**