

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0128
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 1288013, 21 Whistler Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2018/1669 granted for Demolition works and construction of a shop top housing development including strata subdivision
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Pavilion Residences (No.3) Pty Ltd
Applicant:	Ted Byrne

Application Lodged:	28/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	11/04/2024 to 25/04/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.56 of the EP&A Act seeks to modify the built form approved under development consent DA2018/1669.

Specifically the works incorporate the following:

Basement

- Lower the basement level by 260mm (from RL1.450 to RL1.190)

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 - 6.2 Earthworks

SITE DESCRIPTION

Property Description:	Lot 1 DP 1288013 , 21 Whistler Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Whistler Street.</p> <p>The site is regular in shape with a frontage of 17.75m along Whistler Street and a depth of 15.8m. The site has an area of 278m².</p> <p>The site is located within the E1 Local Centre zone and is currently vacant after existing buildings have been demolished under the parent consent.</p> <p>The site is generally flat and does not contain any significant landscape features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is predominantly characterised by two to four storey shop top housing developments and four to six storey residential flat buildings.</p>

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:

DA2018/1669 - Demolition and construction of a five storey shop top housing development comprising a ground floor retail premises and 8 residential apartments. (Approved by LEC on 22 July 2020)

Mod2022/0577 - Modification of Development Consent DA2018/1669 granted for Demolition works and construction of a shop top housing development including strata subdivision. (Approved by Council 22 March 2023)

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 DA2018/1669, 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	<p>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 DA2018/1669.</p> <ul style="list-style-type: none"> • The modified development remains consistent with the original approval in terms of use and density of development. • The proposed is maintained within the footprint of the original consent. • The bulk and scale of the development remain largely the same and the visually is not significantly altered from the original approval when viewed from the street and adjoining properties.
(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	<p>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.</p>
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last	<p>Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2018/1669.</p>

Section 4.56- Other Modifications	Comments
address known to the consent authority of the objector or other person, 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.

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 4.56 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&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&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent/</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public 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 application has been publicly exhibited from 11/04/2024 to 25/04/2024 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 1 submission/s from:

Name:	Address:
Mr Nicholas Paul Huber	5 / 30 Belgrave Street MANLY NSW 2095

The following issues were raised in the submissions:

- **Dilapidation Report**

The above issues are addressed as follows:

- **Dilapidation Report**

The submission has questioned when dilapidation reports will commence for No. 30 Belgrave Street and 17 Whistler Street.

Comment:

Dilapidation reports for this development were conditioned under the parent consent of this application (DA2018/1669). However, No. 30 Belgrave Street and 17 Whistler Street were not included as part of this conditions as the did not immediately adjoin the subject site. Works have commenced with the demolition of the existing structures on site. The proposed basement extension does not require the site beyond the immediately adjoining to have dilapidations reports prepared.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	<p>General Comments</p> <p>This application is seeking consent for modifications to approved development (DA2018/1669) for demolition and construction of a new 5 story apartment building at 21 Whistler Street, Manly.</p> <p>The modifications include lowering the basement levels by 260mm.</p> <p>Previous Acid Sulfate Soils investigations associated with DA2018/1669 were for excavation up to 5.50m in depth below existing ground surface levels. The property is within Acid Sulfate Soils mapped Class 4. Borehole 1 went to a depth of 5m and borehoole two went to a depth of 4.2 metres (as per Geotechnical Site Investigations Report prepared by Crozier dated October 2018 as part of DA2018/1669.)</p> <p>The 2018 report states: <i>Based on the investigation results it is considered that there is a low likelihood of intersecting Acid Sulfate Soils below the site, whilst the proposed works do not appear to</i></p>

Internal Referral Body	Comments
	<p><i>impact the water table. The excavation for the car stacker will be slightly deeper than the investigation was able to extend, however it is considered that conditions have a low likelihood of changing within the subsequent 0.50m depth below the Investigaton base, though further investigation is recommended.</i></p> <p><i>The site investigation results indicate there is a low probability of intersecting Acid Sulfate Soils below the site within the depth of the proposed works, whilst the proposed works should have no impact on the water table external to the site provided the recommendations of this report are implemented.</i></p> <p>A new Geotechnical Investigations Report dated 2 June 2023 prepared by Geotechnical Consultants Australia states; <i>maximum excavation depths varying from approximately 4.7m to 7.3m are expected to be required for construction of the proposed development. Locally deeper excavations for the lift shafts, and building footings and service trenches are also anticipated to be required as part of the planned development.</i></p> <p>The excavation depths have increased however the likelihood of intercepting Acid Sulfate Soils remains low.</p> <p>Environmental Health recommends approval without conditions however the original conditions applied through the DA remain applicable.</p>
NECC (Development Engineering)	The Statement of Modification has been reviewed. Development engineering raises no objections to lowering the basement level by 260mm, subject to the retention of the existing engineering conditions of consent.
NECC (Flooding)	<p>The proposal is for modifications to DA 2018/1669. Specifically, the lowering of the basement floor level.</p> <p>The western portion of the property is within the Medium Risk Flood Precinct. However, the Whistler Street basement basement entry is outside the identified Flood Risk Precincts. As such, there are no flood related development controls.</p>
NECC (Water Management)	With regard to water management, the proposed modifications are relatively minor and do not introduce any new issues that should not have already been mitigated under the original development application. Any dewatering must be compliant with WaterNSW and Council requirements.

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

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

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

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

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

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

(c) the building concerned contains at least 4 or more dwellings.

The proposed modification application is for minor built form changes to the approved shop top housing development. The proposed modification is not incorporating an additional storey nor is the development increasing the density the proposal is not considered to be a substantial redevelopment or refurbishment of the existing building. The proposal does not involve the erection of a new building and it is not a conversion of an existing building. Therefore the proposal does not meet any of the provisions under Part 4(1A) of the SEPP, and this policy does not apply.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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?	
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	15m	16.38m (Building) 17.2m (Lift overrun)	No changes above ground level	N/A	N/A
Floor Space Ratio	FSR: 3:1 (834sqm)	FSR: 2.8:1 (783sqm)	No change	N/A	N/A
Gross floor area in Zone B2	min 25% Commercial GFA, maximum 1000sqm per premises (203.6sqm)	Commercial GFA: 18.7% Max sqm per premises: 152sqm	No change	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.14 Requirement for development control plans	Yes

Detailed Assessment

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
(b) to allow earthworks of a minor nature without requiring separate development consent.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the previously approved Waste Management Plan for the development. A condition was previously included in the recommendation of this report requiring any fill to be of a suitable quality.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the original consent of this report to limit impacts during excavation/construction.

- (e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the approved Waste Management Plan for the development.

- (f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions were included in the original consent that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
4.2.3 Setbacks in LEP Zones B1 and B2	Nil	Nil	No change	N/A
Schedule 3 Parking and Access	In Manly Town Centre Business Zone (LEP Zone B2- Local Centre) 0.6 resident parking space for each Studio or one bedroom dwelling, plus 1 resident parking space for each 2 bedroom dwelling, plus 2 resident parking spaces for each 3 or more bedroom dwelling, and plus 0.16 visitor parking space for each dwelling (irrespective of number of bedrooms). 8 residential 2 visitor	13 residential Nil visitor	No change	N/A
	1 per 40sqm Commercial 4 Commercial	Nil	No change	

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.4 Car Parking and Access	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. Mod2024/0128 for Modification of Development Consent DA2018/1669 granted for Demolition works and construction of a shop top housing development including strata subdivision on land at Lot 1 DP 1288013,21 Whistler Street, 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- 420197 - MOD2023/0128	The date of this notice of determination	Modification of Development Consent DA2018/1669 granted for Demolition works and construction of a shop top housing development including strata subdivision Add Condition No.1B - Modification of Consent 2
PAN- 262897 - Mod2022/0577	22 March 2023	Modification of Development Consent DA2018/1669 granted for Demolition works and construction of a shop top housing development including strata subdivision Add Condition No.1A - Modification of Consent Add Condition 21A - Building Code of Australia Fire Safety Requirements Add Condition 21B - Access and Facilities for Persons with Disabilities Add Condition 21C - External finishes and colour scheme Add Condition 21D - Vehicular Swept Paths Add Condition 51A - Resident Parking permits

Modified conditions

A. Add Condition No.1B - Modification of Consent 2 - 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
S4.56 01	F	Basement	Wolski.Coppin	5 March 2024
S4.56 02	F	Ground	Wolski.Coppin	5 March 2024
S4.56 08	C	Section AA	Wolski.Coppin	5 March 2024
S4.56 09	C	Section BB	Wolski.Coppin	5 March 2024

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.

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 15/05/2024, under the delegated authority of:



Rodney Piggott, Manager Development Assessments