

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0065
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Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot 2 DP 252420, 38 Stuart Street MANLY NSW 2095
Proposed Development:	Modification to Development Consent DA251/2008 granted for the demolition of the existing building and construction of a building comprising two dwellings
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Sara Louise Lane Ross Boyd Lane
Applicant:	Ross Boyd Lane

Application lodged:	13/02/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	22/02/2018 to 12/03/2018
Advertised:	Not Advertised
Submissions Received:	7
Recommendation:	Refusal

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment
 Manly Local Environmental Plan 2013 - Zone RE1 Public Recreation
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 2 DP 252420 , 38 Stuart Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of a single allotment located on the south-western side of Stuart Street, Manly.</p> <p>The site is irregular in shape with a frontage of 12.2m along Stuart Street and a maximum depth of 59m. The site has a surveyed area of 592m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a residential flat building comprising two apartments.</p> <p>The site falls from the street frontage to the rear boundary which abuts Little Manly Beach. To the north east of the subject site the residential development is characterised by two and three storey dwellings and apartments in landscaped settings. Land surrounding the side and rear boundaries of the site is zoned RE1 Public Recreation and the land is owned by Council.</p> <p>A retaining wall located at the rear of the site separates the subject site from the beach front of Little Manly Beach. The existing stairs located at the rear extend onto the beach which is land zoned RE1 Public Recreation.</p>

Map:



SITE HISTORY

Relevant Applications

- DA561/2008 - for demolition of existing residential flat building and erection of a three storey residential flat building comprising of two (2) units including double garage, swimming pool and landscaping works. approved by the Land and Environment Court on 7/10/09.
- DA261/08 Part 1 - modification application to modify consent to add an underground basement area under part of the approved building footprint approved on 17/06/10.
- DA261/08 Part 2 - modification application to modify the internal layout and to make minor amendments to the pool and fences approved on 12/08/10.
- DA261/08 Part 3 - modification application to add a separate pedestrian walkway direct from the footpath to the building foyer and modified driveway was approved on 16/08/11.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify development consent DA251/2008 granted for the demolition of the existing building and construction of a building comprising two 2 dwellings. DA261/2008 was granted consent by the Land and Environment Court (*Lane v Manly Council [2009] NSWLEC 1329*).

Specifically the proposal seeks to modify Condition No. DA1 which reads as follows:

"...The landscape plan above is to be amended prior to the issuing of the Construction Certificate in accordance with the red markings and notations as shown in Exhibit F in the proceedings and this includes:

- deletion of both existing and the proposed stairs from subject property to the beach;*
- the side boundary fence with No. 36 to be a maximum height of 1.2m for a distance of 18m from the south-western corner with the beach; and*
- deletion of timber screen and curved portion of deck in vicinity of common boundary with No. 36..."*

The proposal seeks to delete the words '***both existing and***' from (a). The modified condition is proposed to read as follows:

"....The landscape plan above is to be amended prior to the issuing of the Construction Certificate in accordance with the red markings and notations as shown in Exhibit F in the proceedings and this includes:

- (a) deletion of ***both existing and*** the proposed stairs from subject property to the beach;*
- (b) the side boundary fence with No. 36 to be a maximum height of 1.2m for a distance of 18m from the south-western corner with the beach; and*
- (c) deletion of timber screen and curved portion of deck in vicinity of common boundary with No. 36....."*

It should be noted that the stairs extend from the rear boundary of the site onto the adjoining Council owned land which is zoned RE1 Public Recreation under Manly Local Environmental Plan 2013 and no owners consent from Council has been lodged with this application.

HISTORY OF SUBJECT APPLICATION

Following a preliminary assessment of the application, Council wrote to the applicant by letter dated 14 May 2018 detailing a number of fundamental issues that would not allow Council to support the application in its current form.

The applicant responded to the letter on 30 May 2018. The applicant sought to provide additional information to address some of the concerns raised with regards to Council's Coastal Officer's referral response.

The submission of additional information was not accepted/agreed to in accordance with s55 of the Environmental Planning and Assessment Regulation 2000, the applicant was advised of this on 30 May 2018. The application has been assessed on the information as originally submitted.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 DA261/2008, 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 - Modification by consent authorities of consents granted by the Court	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 DA261/2008.
(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, Manly Local Environment Plan 2013 and Manly Development Control Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA261/2008.
(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 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 79C (1) (b) – the likely	(i) Environmental Impact

Section 79C 'Matters for Consideration'	Comments
<p>impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>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>As detailed throughout this report, the proposed retention of the existing stairs for access to private property from and onto public land and continuance of an unlawful encroachment onto Council land results in unreasonable environmental impact.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 79C (1) (c) – the suitability of the site for the development</p>	<p>The site is considered unsuitable for the proposed development.</p>
<p>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Public Exhibition” in this report.</p>
<p>Section 79C (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) and objectives of the land use Zone RE1 Public Recreation and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community.</p> <p>The proposed retention of the existing stairs onto public land unreasonably impacts upon the orderly and public use of Little Manly Beach (public reserve).</p> <p>In this regard, the development, as proposed, is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Ms Judith Rosemary Brain	71 Stuart Street MANLY NSW 2095
Miss Susan Janis Rice	3/57 Stuart Street MANLY NSW NSW 2095
Nicolas Ewald	3 / 57 Stuart Street MANLY NSW 2095
Mr David Anthony Parsons	7 Canea Crescent ALLAMBIE HEIGHTS NSW 2100
Mr Evelyn Arthur Shervington	82/1 Addison Road MANLY NSW 2095
Ms Jacqueline French	1/11 Stuart Street MANLY NSW 2095
Mr Gregory Raphael Mullens	21 Peacock Street SEAFORTH NSW 2092

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

- *The Court refused to grant consent to the stairs providing direct access onto the public beach.*
- *The conditions of the Court should be retained.*
- *The stairs obstruct the beach and the public use of the beach*
- *The retention of the stairs is not in the public interest.*
- *The stairs effect the community use of the land and should be removed.*
- *The stairs have an adverse impact on the public domain and the use and enjoyment of Little Manly Beach.*

The matters raised within the submissions are addressed as follows:

As detailed throughout this Assessment Report, the assessment of this modification application generally concurs with the issues raised above.

The proposed modification is inconsistent with the objectives and requirements of land use Zone RE1 Public Recreation, Clause 6.9 Foreshore scenic protection area under Manly Local Environmental Plan 2013 and is not considered to be in the public interest.

Further, the proposed stairs sit within public land owned by Northern Beaches Council. The development as proposed relates to the retention of stairs within land owned by Northern Beaches Council requires owners to be provided with the application. No owners consent has been provided within the application and this has been included as a reason for refusal.

These matters have been included as reasons for refusal contained within the Recommendation of this Assessment Report.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Retain existing biodiversity conditions for DA0261/2008.
NECC (Coast and Catchments)	The following reports have been reviewed: <ul style="list-style-type: none"> • Statement of Environmental Effects

Internal Referral Body	Comments
	<p>The Section 96 Modification is not supported. The intent and details of the original court condition (Condition DA1) for removal of the existing access stairs is supported.</p> <p>The existing access stairs are not on private property and result in an encroachment on to the Little Manly public beach reserve.</p> <p>The encroachment is not consistent with Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area: Development Control Plan 2005 (Part 2 Planning Principles and Division 2 Matters for consideration).</p>
Parks, reserves, beaches, foreshore	<p>The Section 96 Modification is not supported. The intent and details of the original court condition (Condition DA1) for removal of the existing access stairs is supported.</p> <p>The existing access stairs are not on private property and result in an encroachment on to the Little Manly public beach reserve.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. 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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views) has been undertaken. The proposal is considered to be inconsistent with the above provisions of the SREP.

This has been included as a reason for refusal.

Manly Local Environmental Plan 2013

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

There are no development standards applicable to the assessment of the proposed modification.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	N/A
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	No
6.10 Limited development on foreshore area	N/A

Detailed Assessment

Zone RE1 Public Recreation

The underlying objectives of the RE1 Public Recreation zone

- *To enable land to be used for public open space or recreational purposes.*

Comment:

The existing stairs provide an obstruction within an existing public reserve and limit the ability for public to use the land for public open space or recreational purposes.

The proposed modification is inconsistent with this objective.

- *To provide a range of recreational settings and activities and compatible land uses.*

Comment:

The proposed retention of the existing stairs for access to private property from and onto public land does not allow for the adjoining public reserve to provide a range of recreational settings, activities and is not a compatible land use.

The proposed modification is inconsistent with this objective.

- *To protect and enhance the natural environment for recreational purposes.*

Comment:

The proposed retention of the existing stairs for access to private property from and onto public land does not protect or enhance the natural environment of the Little Manly Beach area for recreational purposes.

The proposed modification is inconsistent with this objective.

- *To protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean.*

Comment:

The proposed retention of the existing stairs for access to private property from and onto public land does not protect, appropriately manage or restore the Little Manly Beach which is visually exposed to the Harbour waters.

The proposed modification is inconsistent with this objective.

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

Comment:

The existing stairs which are proposed to be retained result in an encroachment onto public land (Little Manly Beach). The stairs do not have regard to the existing vegetation, topography or the intended use of surrounding RE1 zoned land.

The proposed modification is inconsistent with this objective.

Conclusion

The proposed modification is inconsistent with the objectives of the RE1 Public Recreation zone. The stairs result in an encroachment onto public land and obstruct the public and orderly use of the land. This has been included as a reason for refusal.

Permitted land uses

The following items are listed as permitted with consent:

'3 Permitted with consent

Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Charter and tourism boating facilities; Community facilities; Depots; Emergency services facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Information and education facilities; Jetties; Kiosks; Marinas; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Research stations; Respite day care centres; Restaurants or cafes; Roads; Take away food and drink premises; Water recreation structures; Water recycling facilities; Water reticulation systems; Water storage facilities'

The application relies upon the permissibility of 'recreation area' in seeking to retain the stairs.

Recreation area is defined as:

'recreation area means a place used for outdoor recreation that is normally open to the public, and includes:

(a) a children's playground, or

(b) an area used for community sporting activities, or

(c) a public park, reserve or garden or the like,

and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).'

Comment:

The proposed retention of the existing stairs for access to private property from and onto public land is inconsistent with land use definition of 'recreation area'. Therefore the development is not permissible

within the RE1 Public Recreation zone and this has been included as a reason for refusal.

6.9 Foreshore scenic protection area

Detailed Assessment

1) The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

Comment:

The proposed retention of the stairs which protrude onto public land has an unreasonable impact on the visual aesthetic amenity and views to and from Sydney Harbour and the foreshore of Little Manly Beach.

The proposed modification is inconsistent with this objective.

2) This clause applies to land that is shown as “Foreshore Scenic Protection Area” on the Foreshore Scenic Protection Area Map.

Comment:

The subject site is located on land identified as being within the “Foreshore Scenic Protection Area” on the Foreshore Scenic Protection Area Map.

3) 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 modification will result in a detrimental impact on the visual amenity of the Harbour and Little Manly Beach foreshore.

The encroachment of the stairs from private land onto public land has an unreasonable impact on the foreshore and obstructs the public use of the land. The development is therefore unsuitable in its current form.

The proposed modification is inconsistent with this objective.

Conclusion

The proposed modification is inconsistent with the objectives of this Clause and this has been included as a reason for refusal. _

Manly Development Control Plan

Built Form Controls

There are no built form controls applicable to the assessment of the proposed modification.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1 Residential Development Controls	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	N/A	N/A
4.1.4.4 Rear Setbacks	N/A	N/A
5.4.1 Foreshore Scenic Protection Area	No	No

Detailed Assessment

5.4.1 Foreshore Scenic Protection Area

Detailed Assessment

5.4.1 Foreshore Scenic Protection Area

LEP clause 6.9 designates land in the Foreshore Scenic Protection Area as shown on the LEP Foreshore Scenic Protection Area Map to protect visual aesthetic amenity and views both to and from Sydney Harbour, the Pacific Ocean and the Manly foreshore. Development in the Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place. Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

5.4.1.1 Additional matters for consideration

LEP clause 6.9(3)(a) to (d) lists certain matters to be taken into account in relation to all development within the Foreshore Scenic Protection Area.

a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:

- i) minimise the contrast between the built environment and the natural environment;*
 - ii) maintain the visual dominance of the natural environment;*
 - iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;*
 - iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;*
 - v) locate rooflines below the tree canopy;*
 - vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and*
 - vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.*
- b) Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the*

foreshores in Manly.

Comment:

As detailed under the Manly Local Environmental Plan 2013 (Clause 6.9) section of this report, the proposed modification is considered to be inconsistent with the objectives and requirements of this Clause and this has been included as a reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

Owners consent

The proposed modification relates to the retention of an existing staircase that extends onto Little Manly Beach which is a public reserve owned by Council.

The stairs are located wholly within the public reserve and abut the rear boundary of the site.

In accordance with Clause 115(1)(h) of Environmental Planning and Assessment Regulation 2000, if the applicant is not the owner of the land, as is this case in this circumstance, an application for modification of a development consent must contain *'a statement signed by the owner of the land to the effect that the owner consents to the making of the application'*.

The modification application does not contain owners consent from Northern Beaches Council as the land owner of the land to which this application relates.

This has been included as a reason for refusal.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Modification Application No. Mod2018/0065 for Modification to Development Consent DA251/2008 granted for the demolition of the existing building and construction of a building comprising two dwellings on land at Lot 2 DP 252420,38 Stuart Street, MANLY, subject to the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of the land use zone RE1 Public Recreation of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is prohibited within the land use zone RE1 Public Recreation of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.4.1 Foreshore Scenic Protection Area of the Manly Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 the application does not comply with the provisions of Clause 115(1) of the Environmental Planning and Assessment Regulation 2000, in that the application does not provide the required information in the form of owners consent in writing from the owners of the adjoining land, being public land owned by Northern Beaches Council.
7. Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979 the proposed development is not in the public interest as the development is contrary to the relevant requirement(s) and objectives of the land use Zone RE1 Public Recreation and is contrary to the expectations of the community. The proposed retention of the existing stairs onto public land unreasonably impacts upon the orderly and public use of Little Manly Beach (public reserve).
8. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 .