

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| Application Number: | Mod2019/0241 |
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| Responsible Officer: | Catriona Shirley |
| Land to be developed (Address): | Lot 4 DP 249261, 4 Laura Street SEAFORTH NSW 2092 |
| Proposed Development: | Modification of Development Consent DA148/2014 granted for alterations and additions to an existing dwelling including a sea wall |
| Zoning: | Manly LEP2013 - Land zoned E3 Environmental Management |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Marcelle Carr |
| Applicant: | Space Landscape Designs Pty Ltd |

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| Application Lodged: | 22/05/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 03/06/2019 to 17/06/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

EXECUTIVE SUMMARY

The application seeks to modify the existing Development Consent No.148/2014 at 4 Laura Street, Seaforth.

The Modification Application is referred to the Development Determination Panel, as the original application was determined by the Manly Council Development Assessment Unit on 25 February 2015.

The modified works includes the demolition of the existing boatshed and external rear access stairs, as well as the construction of an inclinator, additional sections of a sea wall, a recessed storage shed, access ramp and additional landscaping.

The site is a large (976.2m²) waterfront parcel of land, with the rear of the site having a steep slope of over 40 degrees from the top to bottom, where the site is bordered by Middle Harbour.

The proposal is permissible with consent in the E3 - Environmental Management zone under Manly Local Environmental Plan 2013, and makes no change to the previously approved building height or floor space ratio.

The proposal involves minor variations to the built form controls under the Manly Development Control Plan 2013 in relation to foreshore building line and rear setback. In this regard, the proposal will not detrimentally impact on the amenity of neighbouring properties or the character of the Sydney Harbour foreshore.

The proposal was referred to the Foreshores and Waterways Planning and Development Advisory Committee who has no additional matters to raise with respect to the proposed development.

The proposed development was notified and no submissions were received.

The modified redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

Accordingly, the modified application is recommended for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for the following works:

- Removal of the existing boat shed,
- Removal of the timber seawall logs and replaced with sandstone, to create a new sections of sea wall,
- Removal of external rear access stairs on the western boundary and adjoining the foreshore deck area,
- Construction of a new storage shed,
- Construction of a new external access from the foreshore, and
- Construction of a new inclinor on the western side of the property.

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

Assessment - Foreshore and Waterways Planning and Development Advisory Committee
 Manly Local Environmental Plan 2013 - 5.7 Development below mean high water mark
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

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| Property Description: | Lot 4 DP 249261 , 4 Laura Street SEAFORTH NSW 2092 |
| Detailed Site Description: | <p>The property is legally described as Lot 4, within Deposited Plan 249261, and is known as 4 Laura Street, Seaforth. The site is located within the E3 Environmental Management zone under the Manly Local Environment Plan 2013 (MLEP2013) and also within the Sydney Harbour Catchment Area under the Sydney Harbour Catchment Regional Environment Plan, 2005 and the Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005.</p> <p>The site is located on the southern side of Laura Street and has a north-south orientation. The site has a steep slope of over 40 degrees from the middle of the site to the rear foreshore line adjoining Middle Harbour.</p> <p>The site has an irregular shape with a total area of 976.2 m². The site measures 4.875 metres wide at the Larura Street frontage with side boundaries being a total of 61.525 metres on the eastern side and 52.755 metres on the western side to the rear mean high water mark. The Middle Harbour foreshore rear boundary is approximately 29.7 metres in length. Total site area is calculated deducting the area over the water, as demonstrated on the deposited plan.</p> <p>The subject property and surrounding sites are all orientated to take advantage of the expansive views to Middle Harbour.</p> <p>Existing structures on the site include a four level dwelling with an attached garage, swimming pool, stairs to foreshore</p> |

waterfront, a boatshed and two jetties.

Surrounding sites consist of multi-level dwelling houses spread across the steep topography, within densely landscaped settings.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant development applications for the property:

- Building Certificate No. **BC2019/0071** for the changes to the RL levels of the lower ground, ground, first and second floor where approved by Council on the 20 September 2019.
- Development Application No. **10.2014.148** for the alterations and additions to an existing dwelling, including a new masonry sea wall and retaining walls to replace existing timber logs, new timber stairs, new deck areas, new decked landings, new walkways and increasing the depth of the existing boatshed was approved by the Manly Council Development Assessment Unit on the 25 February 2015.
- Development Application No. **11.2010.198.1** for alterations and additions to an existing dwelling, including a second floor addition, new roof and extend garage was approved by the Manly Council Development Assessment Unit on the 26 October 2010.

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 Development Assessment 148/2014, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55 (2) - Other Modifications | Comments |
|---|---|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: | |
| (a) it is satisfied that the 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 Development Application No.10.2014.148. |
| (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and | Development Application 148/2014 did not require concurrence from the relevant Minister, public authority or approval body. |
| (c) 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 Environmental Plan 2013 and Manly Development Control Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development | See discussion on "Notification & Submissions Received" in this report. |

| Section 4.55 (2) - Other Modifications | Comments |
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| control plan, as the case may be. | |

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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 | None applicable. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Manly Development Control Plan 2013 applies to this proposal. |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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>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 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 insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> |

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| | Clause 98 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. |
| 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) Environmental Impact 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) 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> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application 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 of the application Council received no submissions.

REFERRALS

| Internal Referral Body | Comments |
|------------------------|---|
| Landscape Officer | Council's Landscape section have assessed the application against the landscape controls of Manly Development Control Plan 2013, Section 3: General Principles of Development, and Section 4: Development Controls and Development Types. |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>The landscape component of the modification proposal is acceptable, subject to the protection of existing vegetation and the completion of landscape works.</p> |
| NECC (Bushland and Biodiversity) | <p>The Council's Officer has no objections to the proposal subject to inclusion of the original conditions of consent.</p> |
| NECC (Coast and Catchments) | <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The applicant has submitted a revised Statement of Modifications, prepared by the Space Landscape Designs Ltd. dated 10 September 2019, which addressed issues related to the Coastal Management Act 2016 and SEPP (CM) 2018.</p> <p>Coastal Management Act 2016</p> <p>The applicant has proposed construction of additional areas of a seawall. Hence the proposed development must satisfy the requirements of the Section 27 of the Coastal Management Act 2016.</p> <p>To satisfy the requirements of the Section 27 of the Coastal Management Act 2016, the applicant has shown and stated that 'No beach or adjacent beach' will be affected. The new works are to be funded and maintained by the owner through the revised Statement of Modifications, prepared by the Space Landscape Designs Ltd. dated 10 September 2019. Council accepts the justifications and the statement as a condition of consent.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>The subject land has been located on both the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence Clauses 13, 14 and 15 of the CM SEPP are relevant.</p> <p>However, as the subject land is located under the Sydney Harbour Foreshores and Waterways Area, Clauses 13 and 14 do not apply. Requirements of the Clause 15 have shown to be complied with in the revised Statement of Modifications, prepared by the Space Landscape Designs Ltd. dated 10 September 2019. Council accepts the justifications</p> <p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, and Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005</p> |

| Internal Referral Body | Comments |
|---|--|
| | <p>The subject land has been located within the Sydney Harbour Catchment Area. On internal assessment, the application has been assessed to have satisfied the requirements of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005.</p> <p>As such, the modified works can be approved subject to conditions.</p> |
| Strategic and Place Planning (Heritage Officer) | The Heritage referral comments and any recommendations will be submitted via a supplementary report for consideration by the Northern Beaches Council Development Determination Panel. |

| 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. |
| Aboriginal Heritage Office | <p>Aboriginal Heritage - National Parks & Wildlife Act 1974</p> <p>The provisions of the NP & W Act (1974) provide protection for Aboriginal objects (material evidence of indigenous occupation) and Aboriginal places (areas of cultural significance to the Aboriginal community).</p> <p>The following sections from Part 6 of the Act are particularly relevant for this application:</p> <ul style="list-style-type: none"> Section 89A states that anyone who discovers an Aboriginal object is obliged to report the discovery to Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC). Section 86 states that it is an offence to harm or desecrate an Aboriginal object or Aboriginal place. <p>The property is listed as High to Very High potential for Aboriginal heritage.</p> <p>The original development application was referred to the Aboriginal Heritage Office, who had the following comments:</p> <p><i>"There are known Aboriginal sites in the area. The area of the proposed development is identified as having high potential for unrecorded Aboriginal sites. From the development application photographs taken show a high likelihood of Aboriginal archaeological evidence present on the proposed development area. The Aboriginal Heritage Office recommends a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the</i></p> |

| External Referral Body | Comments |
|------------------------|---|
| | <p><i>land and recommendations for any further action if required."</i></p> <p>As a result a Aboriginal Due Diligence Assessment was undertaken by Artefact Heritage, dated 12 December 2014, and the assessment uncovered the following:</p> <ul style="list-style-type: none"> • No previously recorded Aboriginal sites are located within the study area. • No new Aboriginal sites were recorded during site survey for the current study. • The study area has been extensively modified as a result of European development. • The study area has been assessed as having low archaeological potential. <p>As a result the Aboriginal Due Diligence Assessment concluded and recommended the following:</p> <ul style="list-style-type: none"> • There are no constraints on the proposed works with regard to Aboriginal Heritage. • If changes are made to the proposed works that may result in impacts to areas not covered by this assessment, further archaeological assessment may be required. • If unexpected Aboriginal sites are located during the proposed works, all work in the area must stop immediately and the OEH, Local Aboriginal Land Council and a qualified archaeologist must be contacted. Further assessment and permits may be required before works can commence. • If human remains are found, work MUST cease, the site must be secured and the NSW Police and the Office of Environment and Heritage should be notified. <p>As a result, the additional works are to be located in areas covered by the Aboriginal Due Diligence Assessment. Therefore, no further referral assessment or archaeological assessment is required to be undertaken.</p> |

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 Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposed modifications are considered to satisfy Clause 2,
- The proposed modifications are considered to satisfy Clauses 13 & 14,
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in Clause 21 (a) to (i),
- The proposed modifications are considered to satisfy Clause 22(a) to (e),
- The proposal has been designed and appropriately sited on the matters listed in Clause 25(a), (b) and (c), and
- The proposal has been designed and appropriately sited to ensure protection of the matters listed in Clause 26(a),(b) and (c) (relating to maintenance, protection and enhancement of views).

The proposal is considered to be consistent with the above provisions of the Sydney Harbour Catchment Regional Environmental Plan 2005 (REP).

SEPP (Coastal Management) 2018

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Therefore, provisions of this policy are applicable in relation to the proposal.

However, as the subject land is located under the Sydney Harbour Foreshores and Waterways Area, Clauses 13 and 14 of the CM SEPP 2018 do not apply but have been considered.

Following detailed assessment of the development, Council can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land as listed in clause 15 of the CM SEPP.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

Manly Local Environmental Plan 2013

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| 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 | 2.9m (Boatshed) | 0.8m Raised piers for the inclinator track 2.6m Retaining wall/shed | - - | Yes Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--------|------------------------------|
| | |

| Clause | Compliance with Requirements |
|--|------------------------------|
| 4.3 Height of buildings | Yes |
| 5.7 Development below mean high water mark | Yes |
| 6.2 Earthworks | Yes |
| 6.8 Landslide risk | Yes |
| 6.9 Foreshore scenic protection area | Yes |
| 6.10 Limited development on foreshore area | Yes |

Detailed Assessment

5.7 Development below mean high water mark

The site is identified as being within located within the Foreshore Scenic Protection Area Map of Manly Development Control Plan (MDCP) 2013, and adjoins the mean high water mark of Sydney Middle Harbour. Therefore, the objectives of the clause are applicable in relation to the modified proposal.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- All works as part of the modification are above the mean high water mark. The proposed works have been appropriately environmentally assessed, designed, and sited to avoid adverse impacts on the matters listed in clause 1 and 2.

It is considered that the proposal is consistent with the matters prescribed by sub-clauses clauses 1 and 2 of Clause 5.7 Developments below Mean High Water Mark within the MLEP 2013.

6.2 Earthworks

A Geotechnical Report has been prepared by White Geotechnical Group, Reference No. J0220A, dated 7 May 2018 and submitted with the application. This report and its recommendations are included within the conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required excavation.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is not likely to cause disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development as listed in clause 3(a),
- The proposal is not likely to effect of the development on the likely future use or redevelopment of the land as listed in clause 3(b),
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c) & (e),
- The proposal is not likely to effect of the development on the existing and likely amenity of adjoining properties as listed in clause 3(d),
- There are no relics on the site, therefore clause 3(f) is not applicable,
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(g), and
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(h).

Accordingly, Council's Landscape and Biodiversity officers have concluded that the impact of the earthworks will not unreasonably disrupt vegetation on the property.

The conditions applied within the original development application, No.10.2014.148.1, such as the sediment control plans, Aboriginal heritage and recommended ameliorative conditions are still valid and will continue to satisfy the matters identified in Clause 6.2 Earthworks.

As such, the modified proposal is considered to be consistent with the provision and the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.2 Earthworks within the MLEP 2013.

6.8 Landslide risk

The site is identified as being within the G3 & G4 Landslip Hazard Map in MDCP 2013. Therefore, the objectives of this clause are applicable in relation to the proposal.

A Geotechnical Report prepared by White Geotechnical Group, Reference No. J0220A, dated 7 May 2018 was submitted with the application. This report and its recommendations are included as a condition to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required excavation.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal design has taken into account the existing layout and access as listed in clause 3 (a),
- The proposal is not likely to effect unreasonably impact the site or the surrounding sites through the design of the proposal, and the construction; methods satisfying the matters as listed in clause 3(b),
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c),
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(d),
- There proposal has reasonably addressed the existing geotechnical constraints of the site as listed in clause 3(e),
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(f), and
- The proposal has been designed, sited and will be managed, to avoid adverse impacts on the matters listed in clause 4(a)(b) & (c).

As such, the modified proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2, 3 and 4 of Clause 6.8 Landslide Risk, within the MLEP 2013.

6.9 Foreshore scenic protection area

The site is identified as being within located within the Foreshore Scenic Protection Area Map of MDCP 2013, and the objectives of this clause are applicable in relation to the proposal.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is unlikely to have unreasonable impacts to the visual amenity of the harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore, therefore satisfying the matters as listed in clause 3(a),
- The proposal is not likely to cause disruption to the scenic qualities of the foreshore as listed in

- clause 3(b),
- The proposal has been designed, and sited to avoid adverse impacts on the matters listed in clause 3(c), and
- There is no conflict between the proposal and water based activities as listed in clause 3(d).

It is considered that the modified proposal is consistent with the matters prescribed by sub-clauses 1, 2, and 3 of Clause 6.9 Foreshore Scenic Protection, within the MLEP 2013.

6.10 Limited development on foreshore area

The site is identified as being within located within the Foreshore Scenic Protection Area Map of MDCP 2013, and the modified works are within the foreshore area of the site. Therefore, the objectives of this clause are applicable in relation to the proposal.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The modified works are for the removal of the existing access stairs and boatshed, with the addition of the recessed storage shed, retaining walls and inclinator, therefore satisfying clause 2 (a), (b) and (c),
- The proposal satisfies the E3 Environmental Management zone objectives, and is unlikely to have unreasonable impacts to the visual amenity of the harbour foreshore area, therefore satisfying the matters as listed in clause 3(a) to (h), and
- The proposal has no public access from the foreshore area, therefore clause 4(a) to (e) do not apply.

As such, it is considered that the modified works are consistent with the matters prescribed by sub-clauses 1, 2, and 3 of Clause 6.10 Limited Development on Foreshore area, within the MLEP 2013.

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 976.3sqm | Requirement | Approved | Proposed | Complies |
|--|-------------------------------------|----------------------------------|--|--------------------|
| 4.1.1.1 Residential Density and Dwelling Size | Density: 1150sqm area per dwellings | 976.3sqm (existing) of site area | No change | Yes |
| 4.1.2.1 Wall Height | Wall on Boundary Height | 2.9m Boatshed | 2.6m Storage Shed | Yes |
| | Wall on Boundary Length 21.65m | 6.0m 27% Boatshed | 0.0m Storage Shed (excavated into the site) | Yes |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | 1.5m Pool | 3.4m Pool | 3.5m Retaining Wall Boat Shed 1.2m Inclinator Track | Yes |
| 4.1.4.4 Rear Setbacks | 8.0m | 9.4m Spa Pool Boat Shed | 5.2m Storage Shed 0.4m - 1.6m Seawall | No* Yes** No |

| | | | | |
|---|---|---|-------------------------------|------------|
| | | | 0.5m - 1.2m Inclinor track | |
| 4.1.4.5 Foreshore Building Lines and Foreshore Area | 15.0m | 9.4m Pool Boat Shed within foreshore building line/area | 5.2m Storage Shed | No* |
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4 | Open space 60% of site area (585.78sqm) | 69% (676sqm) | No change | Yes |
| 4.1.5.2 Landscaped Area | Landscaped area 40% of open space (234.31sqm) | 25% (147sqm) | No change | Yes |
| | 3 native trees | 6 trees | 9 trees | Yes |

* Whilst the proposal does not comply, the storage shed provides greater rear setbacks than previously approved.

** Seawall location previously approved.

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | 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 |
| 3.9 Mechanical Plant Equipment | Yes | Yes |
| 3.10 Safety and Security | Yes | Yes |
| 4.1 Residential Development Controls | Yes | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| 4.1.5 Open Space and Landscaping | 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 | No | Yes |
| Schedule 1 – Maps accompanying the DCP | Yes | Yes |

Detailed Assessment

3.1 Streetscapes and Townscapes

There is no change to the existing presentation of the residential dwelling house to Laura Street.

3.4.2 Privacy and Security

Having regard to the localised situation, the assessment of privacy is to be based on the principle of not creating additional unreasonable impacts on the existing level of privacy between the subject site and the neighbouring properties.

Due to the significant sloping topography, and the western side setback distance of the 1.2m for the proposed inclinator track, additional overlooking could occur.

Therefore, the proposed inclinator is considered against the underlying objectives of the Privacy and Security Control as follows:

- *Objective 1) To minimise loss of privacy to adjacent and nearby development by:*
 - *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
 - *and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed inclinator track is adequately separated from the adjoining dwelling house to the west mitigate any privacy impacts (acoustic and visual). The proposed inclinator track is sited at a lower topography than the western adjoining dwelling house and will also be located over the existing access stairs on the western boundary. This location maintains the existing transitional area on the site, minimising any additional privacy impacts.

The proposed inclinator track runs largely parallel to the western side boundary, where existing overlooking exists. Screening landscaping adjoins the western side boundary to property, No. 5 Laura Street thereby mitigating direct viewing between the properties. See photo 1, 2 and 3 below.



Photo 1. Existing overlooking from the top terrace area to the western property.



Photo 2. Current view of the existing screening vegetation adjoining the proposed inclinator track location.



Photo 3. Existing screening vegetation on the western side boundary adjoining the proposed inclinator track location.

- Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The inclinator is a relatively minimal structure with the largest element being the open cage carriage to carry people up and down the steepest part of the site. The rail will be located as close as possible to ground level depending on the topography. Therefore, the inclinator has no impact on the existing level of sunlight access to the western adjoining property.

The inclinator upper stopping station will adjoin the existing upper rear terrace area where a degree of overlooking currently exists to the western adjoining site, see photo 1 above. The location of the upper stopping station will not create any additional overlooking impacts, and displays no unreasonable overlooking to the habitable or open space of the western adjoining site.

The other inclinator station stops are located over the existing access stairs, and adjoin the existing screening landscaping, minimising additional privacy impacts to the western adjoining property.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported.

3.9 Mechanical Plant Equipment

The development is not expected to produce an unreasonable noise level above the level of normal residential use that is produced on all other similar sites that include inclinator. The noise from the inclinator has been conditioned to require that the mechanic motor for the inclinator is not to exceed 5dB (A) over the ambient background noise level when measured at the nearest property boundary.

Therefore, the proposed inclinator is not likely to result in unreasonable noise issues and reasonable levels of acoustic amenity should be maintained.

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

The proposed inclinator demonstrates a setback of 0.5m to 1.2m from the rear mean high water mark.

The inclinator is a relatively minimal structure, with the largest element being the carriage to carry people up and down the steeper topography of the site. The rail will be located as close as possible to ground level depending on the topography of the very steep site, consistent with other inclinator located in the area.

The carriage will predominantly be at a resting location at an existing dwelling house terrace level, minimising any additional visual dominance in the site.

The proposal includes the removal of the existing access stairs within the rear setback to accommodate the inclinator track. Therefore, built form structures will be reduced within the rear setback area of the site, and additional low level planting will be incorporated to soften the inclinator track area.

The construction of a minor ramp adjoining the the foreshore decking area, will have no amenity impacts to the adjoining neighbours or to the foreshore area.

The solar access and privacy impacts to the western adjoining site will be maintained, as the inclinator track will be located as close as possible to ground level depending on the topography of the very steep site, with existing vegetation screening the inclinator.

The proposed inclinator, which is primarily constructed on piers, is a sensitive solution for the constrained site that preserves the amenity to the adjoining western property, the natural features and biodiversity onsite, while significantly improving amenity for occupants of the subject site.

5.4.1 Foreshore Scenic Protection Area

The inclinator, seawall additions and storage shed area located within the foreshore building setback, as demonstrated in photo 1 below.

However, the site is exceptionally steep with a gradient of over 40% at the rear of the site constraining the location of the storage facility, and creating a need to improve access to the foreshore area.



Photo 4. Location of the existing structures within the foreshore area on behalf of the submitted SEE, dated 6 May 2019.

The inclinator is to enable access to the foreshore area of the site, without having to use the large amount of external stairs. The inclinator will improve access and allow access for people with physical disabilities to the foreshore area of the site.

The proposed inclinator will not have an unreasonable impact on the scenic amenity of the foreshore. The inclinator is a minimal structure that sits close to the ground level, and is consistent with other inclinator within the immediate area. The carriage will predominately be located at the stopping stations adjoining the dwelling house terrace levels. Therefore the carriage has a minimal impact on the scenic quality of the site when viewed from the waterway.

The scenic quality of the site is improved with the removal of the boatshed, and recessing the storage shed into the existing terraces so only the front access doors are visible from the waterway. The new storage shed will also be screened with additional landscaping to soften the built form.

The removal of western side boundary stairs will improve the foreshore creating by creating additional landscaped areas.

The removal of the stairs adjoining the rear foreshore decked area will have negligible additional visual impact on the foreshore area to what was previously approved.

The inclinator, recessed storage shed, stair removal and increased landscaping will enhance the scenic amenity of the foreshore by allowing greater, and safer access to middle harbour, within an improved landscaped setting.

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.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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 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, 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

This Modification Application has been assessed having regards to the original approval at 4 Laura Street, Seaforth.

Public Exhibition

The public exhibition of the application resulted in no submissions.

Referrals

The application was referred to five (5) internal departments and two (2) external authorities and there were no objections raised subject to the conditions of the original proposal being maintained as part of

the consent.

A referral response was received by the Foreshore and Waterways Planning and Development Advisory Committee who had no additional concerns or conditions.

Assessment of the Proposal

The proposal complies with the objectives of the E3 Environmental Management zone, and makes no change to the building height or floor space ratio.

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 has found that the proposal does not comply with certain controls, being the foreshore building line and rear setback. Given the constraints on the development by virtue of the escarpment location and the presence of significant environmental features, some flexibility in applying these controls is necessary. Subject to additional conditions for the inclinor, there will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the character of Laura Street and the Middle Harbour foreshore locality.

Recommendation - Approval

In summary, the proposal is recommended for approval as the siting and design of the additional inclinor, storage shed and access ramp is site responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape and foreshore character.

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. Mod2019/0241 for Modification of Development Consent DA148/2014 granted for alterations and additions to an existing dwelling including a sea wall on land at Lot 4 DP 249261,4 Laura Street, SEAFORTH, subject to the conditions printed below:

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

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

a) The plans and documents listed in the "Notice of Determination" issued on the 8 February 2019 in relation to DA2014/0148, as modified by,

b) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|--|--------------|-------------------------|
| Drawing No. | Dated | Prepared By |
| Site Plan L-01 Rev E | 30/04/2019 | Space Landscape Designs |
| Section Elevations L-02 Rev E | 30/04/2019 | Space Landscape Designs |

| | | |
|---|------------|-------------------------|
| Inclinor and Storage Shed Plan L-03 Rev B | 30/04/2019 | Space Landscape Designs |
|---|------------|-------------------------|

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|--------------|--------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Amendment Geoetchnical Investigation | 7 May 2019 | White Geoetchnical Group |

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

c) The development is to be undertaken generally in accordance with the following:

| Landscape Plans | | |
|---------------------------|--------------|------------------------|
| Drawing No. | Dated | Prepared By |
| Landscape Plan L-04 Rev E | 30/04/2019 | Space Landscape Design |
| Planting Plan L-05 Rev E | 30/04/2019 | Space Landscape Design |

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

B. Add Condition 10A - Inclinor Acoustic Impact to read as follows:

The inclinor is to be acoustically treated so that it does not emit any noise of 5dba above background noise at the nearest residential receiver.

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

Reason: To ensure the acoustic amenity of the neighbouring residents.

C. Add Condition 40A - Lighting of the Inclinor to read as follows:

No bright lighting is to be installed to the carriage of the inclinor. A modest amount of low level lighting may be used for safety purposes only.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.