

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0628
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 101 DP 1110110, 96 - 97 North Steyne MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA272/2017 for Alterations and additions to an existing Residential Flat Building
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Cecil George Koutsos Isabel Brenda Koutsos
Applicant:	Justin Corbett

Application Lodged:	16/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	24/11/2022 to 08/12/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 61.3%
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seek approval for a modification of the existing consent DA272/2017 for alterations and additions to an existing residential flat building.

The original building was approved in 1988 (DA2653/1988) and alterations and additions to the building approved under DA272/2017 and subsequent modification MOD2021/0647.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the proposed modifications exceed the Floor Space Ratio development standard by more than 10%.

The non-compliance with FSR standard arises from the approved non-compliant floor space ratio. The existing building has an approved floorspace which of 2.47:1 (3,301.7m²), this breaches the existing control being 1.5:1 (2,002.5m²). The proposed modification reduces the overall floor space by 70.7sqm. The modified proposal does not significantly increase the bulk or scale of the building.

No submissions were received as part of the public exhibition of the application.

On the balance of all factors, this report finds that the proposal is appropriate for the site and concludes with a recommendation that the NBLPP, as the consent authority, grants approval to the development application.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the EP&A Act seeks to modify the built form approved under development consent DA272/2017.

The subject application involves the following works:

Ground Floor (Unit 1, 2, 3, & 4)

- New car park exhaust shaft adjacent to Unit 4 and corridor.
- Glass balustrades added to terrace/boundary wall.

Level 1 (Unit 5, 6, 7, 8, & 9) & Level 2 (Unit 10, 11, 12, 13, & 14)

- Merge Units 8 & 14 with Units 7/13 and 9/15 resulting in a reduction to total number of units from 22 to 20.
- Reconfigure southern units post-merger.
- Unit 7 & 12: relocation of car park exhaust.
- Unit 8 & 13: new car park exhaust shaft.
- Unit 6 & 11: reconfigure entry and bathroom.
- Unit 6 & 11: reconfigure WIR and ensuite.
- Minor additions and reductions to terraces of merged southern units.

Level 3: (Unit 15, 16, 17, 18, 19 & 20)

- Unit 17: relocation of car park exhaust; internal lift and reconfigure internal layout.
- Unit 18: reconfigure entry, kitchen, laundry and pantry areas.

Level 4: (Upper level of Unit 15, 16, 17, 18, 19 & 20)

- Units 17: removal of car park exhaust.
- Unit 17: reconfigure Bedroom 1 and internal lift.
- Unit 18/19: new car park exhaust.
- Succulents added to non-trafficable areas.

Roof

- New penetration of roof for car park exhaust above Unit 18 & 19.
- Approved access hatch for servicing relocated (as per roof plan).
- Roof plant area reduced.

Landscaping

- Additional cabbage tree palm x 2 – corner of Pine Lane (as per conditions of consent under MOD2021/0647).
- Additional cabbage tree palm x 1 – corner of Pine Street (as per conditions of consent under MOD2021/0647).
- New edging to existing landscaping – corner of Pine Street and North Steyne.
- Replace bluestone wall with lower stone wall (height to allow views over from sitting position on terraces behind).
- Succulents added to non-trafficable areas.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

SITE DESCRIPTION

Property Description:	Lot 101 DP 1110110 , 96 - 97 North Steyne MANLY NSW 2095
Detailed Site Description:	The subject property is commonly known as 96 North

Steyne and legally known as Lot 101 in DP 1110110. The site is located on the western side of North Steyne. The property is irregular in shape and has a frontage of 29.46m to North Steyne, an average depth of 44m. The site has a surveyed area of 1335m².

The site is located within the R3 Medium Density Residential zone from MLEP 2013 and accommodates a five (5) storey residential flat building with vehicular access provided off Pine Street to an existing basement car park. The site is relatively flat and is located within the foreshore scenic protection area.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by shop top housing and residential flat buildings. The adjacent property to the north, at 98 North Steyne, is developed with a five-storey residential flat building. The building is not identified however is located in proximity of a number of other items of local heritage significance. Directly west of the site fronting Pine Lane and Pine Street is a 2 storey residential apartment building. Directly opposite the site to the east is Manly Beach

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:

DA357/2010

Strata Subdivision of existing Residential Flat Building into twenty-two (22) lots. Approved under delegation on 13 April 2011.

DA272/2017

Alterations and additions to an existing residential flat building. Approved by the Northern Beaches Planning Panel (NBLPP) on 4 April 2018.

MOD2021/0647

Modification of Development Consent DA 272/2017 for alterations and additions to an existing Residential Flat Building. Approved by the NBLPP on 2 February 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA272/2017, 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	<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 DA272/2017 and MOD2021/0647 for the following reasons:</p> <ul style="list-style-type: none">• The bulk and scale of the development is generally retained with any changes to the building envelope resulting in a discernible impact when viewed from adjoining and nearby properties and

Section 4.55 (2) - Other Modifications	Comments
	<p>when viewed from a public space.</p> <ul style="list-style-type: none"> • The amenity of the adjoining properties is not compromised with views and privacy as previously approved being generally maintained. • Solar access is retained and remains compliant as originally approved.
(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 DA272/2017 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, and the Northern Beaches Community Participation Plan.
(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 4.55 (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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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>Part 4, Division 2</u> of the EP&A Regulation 2021 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 29</u> of the EP&A Regulation 2021 requires the submission of a Design Verification Certificate from the building designer at lodgment of the development application. This clause is not relevant to this application as the original Development Application for the residential flat building (DA2653/88) was not required to be accompanied by a statement by a qualified designer.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter was addressed via a condition in the original consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter was addressed via a condition in the original consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter was addressed via a condition in the original consent.</p> <p><u>Clause 69</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>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	<p>(i) Environmental Impact</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>

Section 4.15 'Matters for Consideration'	Comments
environment and social and economic impacts in the locality	<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	No submissions were received in relation to this application.
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 from 24/11/2022 to 08/12/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, no conditions</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
NECC (Coast and Catchments)	Supported, subject to conditions

Internal Referral Body	Comments
	<p>The modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i> and State Environmental Planning Policy (Resilience & Hazards) 2021. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p><i>Coastal Management Act 2016 and State Environmental Planning Policy (Resilience & Hazards) 2021</i></p> <p>The subject site has been identified as being within the coastal zone and included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the application satisfies requirements under clauses 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by JV Urban dated October 2022, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p>
NECC (Development Engineering)	<p><i>Supported, no conditions</i></p> <p>The proposed modifications do not alter the original assessment of the application by Development Engineering.</p> <p>Development Engineering support the proposal with no additional or modified conditions of consent recommended.</p>
NECC (Flooding)	<p><i>Supported, no conditions</i></p> <p>The development proposes to change the existing shop to a new interior fitout, mechanical ventilation exhaust. The proposed changes</p>

Internal Referral Body	Comments
	<p>is within the building and there is no change out side of the building other than changing the entry door.</p> <p>The proposed development generally complies with the flood controls in the DCP and LEP.</p>
Strategic and Place Planning (Heritage Officer)	
	HERITAGE COMMENTS
	Discussion of reason for referral
	<p><i>Supported, subject to one condition</i></p> <p>The proposal has been referred to Heritage as the subject site adjoins a heritage item and is within the vicinity of a number of heritage items:</p> <p>Item I2 - All stone kerbs - Manly municipal area</p> <p>Item I194 - House - 7 Pine Street, Manly</p> <p>Item I174 – Beach Reserve—Merrett Park North Steyne and South Steyne</p> <p>Item I173 – North Steyne Surf Club - North Steyne</p> <p>Item I168 – Ocean foreshores - Manly municipal area, boundary adjacent to the ocean</p>
	Details of heritage items affected
	<p>Item I2 - All stone kerbs <u>Statement of Significance</u> Stone kerbs are heritage listed. <u>Physical Description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <p>Item I194 - House Statement of Significance Fine intact example of Federation Queen Anne style. Physical Description Fine Federation Queen Anne style residence, brick with slate roof incorporating attic rooms, return verandah. Retains leadlights.</p> <p>Item I174 – Beach Reserve <u>Statement of significance</u> High significance as natural sand beach and cultural backdrop of paved promenade and first coastal plantings of Norfolk Island Pines. <u>Physical description</u> Beachfront, promenade, sandstone retaining wall, paved, grassed And/or planting beds and remnant plantings of Norfolk Island Pines planted from the 1850's to the 1880's.</p>

Internal Referral Body	Comments																					
	<p>Item I173 – North Steyne Surf Club</p> <p><u>Statement of significance</u></p> <p>The following Statement of Significance has been taken from the 2007 CMP prepared for the property by Manly Council:</p> <p>The North Steyne Surf Life Saving Club (NSSLSC) and building is historically significant for its continuous association with surf life saving and use as a surf life saving club in the same location for nearly 100 years.</p> <p>The North Steyne Surf Life Saving Club (built in 1934) has historic and aesthetic significance as the only remaining largely intact early twentieth century purpose built club building retained in the Manly Beach Precinct. The setting of which includes the Norfolk Pines and northern sandstone retaining sea wall. The building has significance as an Inter-war Free Classical Mediterranean styled building, with Spanish Mission features. The building style, size, form and setting is significant to the Manly Beach and surrounds character and value.</p>																					
	<table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
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Internal Referral Body	Comments
	<div>Is a Heritage Impact Statement required? No</div> <div>Has a Heritage Impact Statement been provided? No</div> <div>Further Comments</div> <div></div>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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.

Comment:

The proposed development proposes minor amendments to the approved development. The application is not introducing an additional storey nor is the proposal 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 880579M_05, 9 November 2022).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	35	35

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

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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Biodiversity and Conservation) 2021

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

The proposed modifications are generally relatively minor compared to the previous approval, and will not significantly alter any impacts to the above matters for consideration.

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

Comment:

No significant impacts will be caused by the proposed modifications.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will remain consistent with the aims and considerations for the coastal environment of Manly along North Steyne.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

No significant impacts will be caused by the proposed modifications.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposed modifications are generally relatively minor, and will not cause any increased risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved*	Proposed	% Variation	Complies
Height of Buildings	13m	146.45m	No change	26.5%	N/A
Floor Space Ratio (Site Area; 1,335m ²)	1.5:1 (2,002.5m ²)	2.47:1 (3,301.7m ²)	2.42:1 (3,231m ²)	61.3% (1,228.5m ²)	No, Reduction of 70.7m ² from approved

* Approved under MOD2021/0647.

As this application received updated GFA/FSR plans to confirm the methodology of calculation, it was noted that discrepancies were evident and therefore, it was considered necessary to re-calculate the GFA/FSR in MOD2021/0647 to assess the actual GFA/FSR approved by the Panel (notwithstanding the numerical data provided in the assessment report at the time).

In the reassessment it was found that a variance of +158.6m² had occurred in that the numerical figure indicated in the assessment report stated a GFA of 3,143.1m² (resulting in a FSR of 2.35:1) whereas the reassessment found it to be 3,301.7m² (resulting in a FSR of 2.47:1). Notwithstanding, the Panel reviewed the same plans as those assessed and subsequently supported the application.

The above table corrects this figure to reflect more accurately the difference between the approved GFA/FSR and the proposed GFA/FSR.

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	1.5:1 (2,002.5m ²)
Proposed:	Proposed 2.42:1 (3,231m ²) Currently approved 2.47:1 (3,301.7m ²)
Percentage variation to requirement:	61.3%

Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development

standard and the underlying objectives of the R3 Medium Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

The objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard (As detailed below). Demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

4.4 Floor space ratio

(1) The objectives of this clause are as follows—

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the proposed building remains largely consistent with the existing building.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposal is consistent with the requirements under clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres,

Comment:

The subject site is not located in a business zone.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposal will not affect the housing needs within the community.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal does not propose to alter the existing dwelling density.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal is for a residential use and not another use.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposed development is a suitable redevelopment of the site.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment:

The proposal is not for a tourist use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Manly Development Control Plan

Built Form Controls

Built Form Controls (Site Area: 1,335m ²)	Requirement	Approved*	Proposed	Complies
4.1.2.1 Wall Height	North side: 12m	13.7m	No change from approved	No change
	West side: 12m	13.7m	No change from approved	No change
4.1.2.2 Number of Storeys	3	5	No change	No change
4.1.4.1 Street Front Setbacks	6.0m or streetscape	Nil (Terrace)	No change from approved	No change
4.1.4.2 Side Setbacks and Secondary Street Frontages	Level 4 - North side: 4.5m (based on wall height)	Level 4 Terrace 2.1m to 2.5m	No change from approved	No change
	Level 3 - North side 4.5m (based on wall height)	Level 3 Terrace - nil	No change from approved	No change
	Secondary street frontage (Pine Street): Prevailing setback / 4.5m	Consistent with prevailing setback	No change from approved	No change
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1	Open space 45% of site area (600.75m ²)	96.4% (1,288.1m ²)	No change from approved	No change
	Open space above ground 40% of total open space	83.3% (979.2m ²)	No change from approved	No change

	(470.2m ²)			
4.1.5.2 Landscaped Area	Landscaped area 25% of total open space (293.87m ²)	12.6% (37.2m ²)	No change from approved	No change
4.1.5.3 Private Open Space	12m ² per dwelling	22 Units >12m ²	20 units >12m ²	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Unit 3 - ground level Unit 18 - 11.3m Unit 19 - 11.3m	No change from approved	No change
	1m curtilage/1.5m water side/rear setback	<u>Fronting North Steyne</u> Unit 3 - 0.3m (water) 0.5m (curtilage) <u>North</u> Unit 18 - 5.4m (water) 5.1m (curtilage) <u>South</u> Unit 19 - 5.0m (water) 5.3m (curtilage)	No change from approved	No change

* Approved under MOD2021/0647.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	N/A	N/A
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.8 Development on Sloping Sites	N/A	N/A
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.5 Road Widening and Realignment	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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

PLANNING CONCLUSION

Overall, the development is a high-quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, subject to the recommended conditions attached.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0628 for Modification of Development Consent DA272/2017 for Alterations and additions to an existing Residential Flat Building on land at Lot 101 DP 1110110,96 - 97 North Steyne, MANLY, subject to the conditions printed below:

A. Add Condition No.1B- "Modification of Consent - Approved Plans and supporting Documentation" to the 'General Conditions' section of the consent to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Dwg No. DA1003 Issue D	3 November 2022	Squillace Architects
Dwg No. DA1004 Issue D	3 November 2022	Squillace Architects
Dwg No. DA1005 Issue D	3 November 2022	Squillace Architects
Dwg No. DA1006 Issue D	3 November 2022	Squillace Architects
Dwg No. DA1007 Issue C	3 November 2022	Squillace Architects
Dwg No. DA2000 Issue D	3 November 2022	Squillace Architects
Dwg No. DA2001 Issue D	3 November 2022	Squillace Architects
Dwg No. DA3007 Issue A	3 November 2022	Squillace Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 880579M_05	9 November 2022	EPS

b) 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
Dwg No. 101 - Issue E	18 October 2022	Site Image Landscape Architects
Dwg No.401 - Issue B	18 October 2022	Site Image Landscape Architects
Dwg No. 501 - Issue B	18 October 2022	Site Image Landscape Architects

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

approved plans.

B. Add Condition No. 19C- Protection of stone kerb in North Steyne - to read as follows:

Care should be taken to ensure that the heritage listed stone kerb in North Steyne is not damaged as a result of construction works or vehicles.

Reason: To ensure the heritage listed kerbs are protected

C. Add Condition No. 11C - Installation and Maintenance of Sediment and Erosion Control - to read as follows:

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site