

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0498
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 DP 965132, 70 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2020/0092 granted for demolition of existing structures, construction of two (2) semi-detached dwellings and Torrens title subdivision of one lot into two
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jason Barry Warburton Idette Kristine Warburton Katherine Sarah Hadfield John Malcolm Boulton
Applicant:	Jason Barry Warburton

Application Lodged:	01/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/10/2020 to 05/11/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 9.7%
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal is referred to the Development Determination Panel (DDP) as it is a 4.55(2) modification application to a development previously determined by the DDP and modification to a previous condition of the Panel is required. The modification application received one (1) submission that has been addressed with information supplied by the applicant and modified conditions as recommended. The proposed modification involves the re-planning (rationalisation) of the floor layouts of the approved semi-detached dwellings and a general lowering of the floor levels and roof elements, as detailed in the

revised architectural plans prepared by *Marston Architects*.

The modification is made pursuant to under Section 4.55(2) due to the variation to the FSR now proposed that is assessed on its merits whereby the mechanism of 'Clause 4.6' is not required to be employed for a "Section 4.55" modification application. However, a detailed assessment of the proposed variation has been provided pursuant to the relevant Manly LEP and Manly DCP objectives. Overall the proposal is considered to be 'substantially the same' and seeks to modify the approved development to reflect minor design changes to the approved semi-detached dwellings, which are largely within the envelope of the approved development form and will not see any increase in the overall height of the development or reduction in the principal setbacks to the existing site boundaries.

The proposed modification to building is considered to remain suitable and appropriate development for the site and is in context with the residential scale and intensity of the residential zone. Principal environmental impact considerations reviewed (including the original reasons for development consent) are views, bulk, landscaping, traffic and parking access, building height (including walls and envelope), privacy, overshadowing, urban character, construction impacts (during works) and stormwater management. The proposal maintains consistency with those considerations and with no unreasonable impact for the modification on the surrounding environment.

The public submission (1) received has been considered and addressed within this report and modified conditions have been applied where appropriate to address those concerns.

The modified proposal will not have an unreasonable impact in relation to view sharing considerations for properties in Rosedale Avenue and no change to engineering, traffic and landscape conditions is required. During the assessment period, no changes were made by the applicant that would require re-notification and some supplementary information was provided to further resolving submission issues raised from No.72 Lauderdale Avenue.

The planning controls under the Manly LEP and Manly DCP apply and in this regard matters relating to the change to FSR are addressed in accordance with the objectives and requirements of those considerations. Other considerations of setbacks, height, landscaping, privacy, amenity and the like have been considered and the modified proposal is considered to remain substantially the same as DA2020/0092

Subject to modified conditions (including the amended plans), no issues have been raised that warrant refusal of the modification application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify a recent approval granted for the demolition of existing structures and construction of a two (2) semi-detached dwelling houses with a two (2) car garage for each dwelling house on the subject land. Details of the changes proposed are summarised as follows for both approved dwellings (No.70A & 70B):

FL 34.395 Basement (modified)

- Minor additional excavation within the footprint of the upper levels for each dwelling, to provide for additional area for water tank storage and an area for air-conditioning plant, in order to reduce potential acoustic issues for the neighbouring properties. The proposed floor level of the basement has been lowered from the approved RL 34.58 to a revised floor level of RL 34.395 (lowered by 185mm).

FL 37.245 Lower Ground Floor Level (modified)

- Re-planning of the lower ground floor level for each dwelling and the repositioning of the approved study and laundry facilities, with the enclosure of previously open undercroft space which was partially screened from the neighbouring view through external screening elements. With the re-planning of the floor plan layout, the external window openings to the eastern and western boundaries have been rationalised, such that each dwelling now only presents a small bathroom window in its side elevation at the lower ground floor level, significantly reducing any opportunity for overlooking of the neighbouring properties.
- The floor level of the lower ground floor level has been lowered from the approved RL 37.43 to a revised floor level of RL 37.245 (lowered by 185mm).
- The approved air-conditioning plant has been relocated to the basement level.

FL40.395 Ground Floor Level (modified)

- Re-planning of the ground floor level to provide for the extension of the dining area for each dwelling to remove an approved internal void space. No new external window openings are proposed and the approved louvre privacy screens to the eastern and western elevations will be maintained.
- The floor level of the ground floor level has been lowered from the approved RL 40.56 to a revised floor level of RL 40.395 (lowered by 165mm)

The proposed architectural modifications as outlined above, including the lowering of the floor levels results in the corresponding reduction in the overall height of the proposed roof, with the north-east facing clerestory roof element over the kitchen being lowered from RL 44.88 to **RL 44.695** (lowered by 185mm).

The maximum height of the proposed garage roof has been reduced from RL 44.64 to RL 44.39 (lowered by 250mm).

As a result of the reconfigured sections of floor space to enclose part of the side balcony and move the laundry under the entry area (adjacent the courtyard) the FSR increases for both dwellings (or the development as a whole. (Note: as a Modification of Consent 'clause 4.6' is not required to be addressed despite the variation to the LEP development standard. An assessment is provided on the merits only pursuant to the FSR control and not clause 4.6)

Subdivision

- 70B - Proposed Lot 10 (364.3sqm) No change
- 70A - Proposed Lot 11 (302.7sqm) No change

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 Local Environmental Plan 2013 - 4.5 Calculation of floor space ratio and site area

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 1 DP 965132 , 70 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject land has a dual road frontage to Lauderdale Avenue and Rosedale Avenue with an angled boundary along Rosedale Avenue. The site width varies from 21.1 metres (m) to 22.9m and has a depth that varies from 26.3m to 38.0m with a total area of 667.1 square metres (sqm). The land falls steeply toward Lauderdale Avenue, having a fall of 9.2m from north to south. The Lauderdale Avenue frontage has a 3.0m high embankment below the site and therefore only pedestrian access is available from this road. The site currently contains two storey dwelling house and garage with landscaped gardens presenting to Lauderdale Avenue, and using Rosedale Avenue as the secondary frontage.</p> <p>The area surrounding the site is predominantly represented by a mix of development comprising one, two and in some</p>

instances, three level detached single and multi-occupancy dwellings and residential flat buildings.

The adjoining property to the east is occupied by a residential flat development, with the adjoining properties to the west being developed with single dwellings.

Development in the vicinity has been designed with living areas and associated open space that are oriented to take advantage of the significant views to Reef Bay and to Sydney Harbour further to the south-east.

The site is not identified as containing any threatened species habitat or items of environmental heritage.

Map:



SITE HISTORY

The existing dwelling, all associated/ancillary structures and vegetation on site will be demolished/cleared as part of the proposal. The site does not contain any items of environmental heritage. Therefore, no further investigation of site history is required for the Modification of consent, with the exception of PLM advice provided.

Pre-lodgement Meeting No.PLM2019/0183 was held with Council on 12 September 2019 to discuss the subdivision, demolition and construction of two semi-detached dwelling houses on the site. The proposal has responded to the PLM advice, including compliance with FSR and height controls, views, privacy, setbacks, building bulk and increased landscaping.

The original PLM advice sought compliance with the FSR across the site as a whole, which was achieved with DA2020/0092. The current modification demonstrates a return to elements removed from the PLM plans for the development application on the basis of the following advice in summary:

"The proposal is not acceptable and would not be supported based on non-compliance with the building

height and substantial FSR non-compliance that would be created as a result of the subdivision of the land. The new lots proposed to be created are insufficient in providing a useable and reasonable area for built form and appropriate landscaping. An increase in landscape area at the front setback and details of change in street parking / access should be included with the proposal"

Development Application No.2020/0092 for the "demolition of existing structures, construction of two (2) semidetached dwellings and Torrens Title subdivision of one lot into two." was approved by Council on 12 August 2020.

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 DA2020/0092, 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 DA2020/0092 in making that assessment the following assessment and analysis is made:</p> <p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 where His Honours states:</p> <p>"[54] <i>The relevant satisfaction required by s96(2)(a) to</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <ul style="list-style-type: none"> <i>• "The works seek to provide for minor alterations to the approved form of the development and which do not substantially alter the building's bulk and scale. The proposed changes will introduce a minor lowering of the building and the predominant side rear and Street setbacks will be maintained.</i> <i>• The changes do not introduce any significant issues for the neighbouring properties in terms of view loss or privacy.</i> <i>• When viewed from the public domain or from the neighbouring properties, the building will largely present the same visual impact and appearance to that originally approved.</i> <i>• Similarly, the application is substantially the same development when subjected to a "quantitative comparison", as the works provide for "Demolition of existing structures, construction of two (2) semi-detached dwellings and Torrens title subdivision of one lot into two" in a location and to a form which is consistent with the consent."</i>

Section 4.55 (2) - Other Modifications	Comments
	<p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p> <ul style="list-style-type: none"> • The proposed revisions will see an increase in the total gross floor area of 47.73sqm to a proposed FSR for the combined development of 0.548:1, which exceeds Council's maximum control of 0.5:1 under clause 4.4 of the Manly Local Environmental Plan 2013. The changes are limited to areas hidden from being readily perceived from the street view and do not expand the height, envelope or alter the primary outer setbacks for the building footprint. • The additional floor space is achieved by infill underneath the entrance hallway and infill of a void area to the side balconies. This enables a more rational and practical floor layout to the ground floor and improved internal living space without compromising the amenity, privacy, views, solar access or landscape setting of the building. • The modified development results in a minor reduction in height across the floor levels and roof levels of the dwelling.
(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 DA2020/0092 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	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 2011 and Manly Development Control Plan.

Section 4.55 (2) - Other Modifications	Comments
(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	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation 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)	<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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Following the completion of the notification period some additional plans and information was

Section 4.15 'Matters for Consideration'	Comments
	<p>submitted of a minor nature (see drawings dated 2.11.2020 by Marston Architects) and was otherwise capable of being addressed by modification conditions to achieve the same outcome with the construction certificate. Renotification of the plans / information is therefore not required by the Community Participation Plan.</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> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
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 modification of the development and review of the original DA file, assessment report and any submissions and relevant reports has been made to ensure consistency and consideration in the context of the modifications provided and the applicants reasons for modification as submitted with the documents received.
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 modification application in the public interest.

Section 4.15 'Matters for Consideration'	Comments

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 22/10/2020 to 05/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Michelle Montgomery	72 Lauderdale Avenue FAIRLIGHT NSW 2094

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

- Visual privacy and noise

The matters raised within the submissions are addressed as follows:

- ***Concern that the changes to western wall will result in changes to the fixed louvres, bathroom window privacy and potential bathroom fan ventilation***

Comment:

In considering and addressing the above matters the applicant has provided a resolution to the objection in that the fixed, angled louvres be installed at the western extremity of the southern/lower floor balcony, matching louvres to western extremity of upper floor southern balcony so as to provide privacy against overlooking 72 Lauderdale Avenue, which is consistent with the existing condition No.24 of the development consent which will remain. The bathroom window to the western external wall will be opaque glass as shown on the modification plans (dated 2.11.2020). The western bathroom fan to be internal with western external wall bathroom fan exhaust vent at its highest point to be not more than 1.6m above existing ground level (below dividing fence height) and covered by an external grille / hood directing exhausted air/ steam and noise downward.

Therefore these issues have been addressed by the applicant and included with a modified condition (that also reflects the same to minimal impact to the eastern boundary for consistency) and therefore do not warrant refusal of the modification application.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineering has no objection to the application. <u>Planning Comment</u> No modification to existing engineering conditions is required as engineer have previously considered parking, vehicle access safety and driveway areas.

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

The requirement of SEPP 55 (and Draft SEPP) have been considered and addressed under the original development assessment. No further assessment is required for the modification works.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the modification application (see Certificate No's.1065658M_03 dated 24 September 2020) for both dwellings.

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Infrastructure) 2007

The requirement of SEPP (Infrastructure) 2007) were considered and addressed under the original development assessment. No further assessment issues pursuant to the SEPP are raised for the modification work.

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
Minimum subdivision lot size: (Site area 667.1sqm)	300sqm	Lot 10 (70B) 364 sqm	No change	N/A	Yes
		Lot 11 (70A) 303.1 sqm	No change	N/A	Yes
Height of Buildings: (EGL from existing floor level slab)	8.5m	Dwelling 70B 8.5m	8.315m	N/A	Yes
		Dwelling 70A 8.5m	8.315m	N/A	Yes
Floor Space Ratio (FSR)	0.5:1 (333.55sqm)	0.477:1 (318.47sqm)	0.548:1 (366.2sqm)	9.7% (32.6sqm)	No*
	182sqm	Post subdivision Lot 10 / 70B	Post subdivision 0.45:1 (162sqm)	N/A	Yes
	151.55sqm	Lot 11 / 70A	0.516:1 (179.2sqm)	18.2%	No*

*See discussion under the heading Floor Space Ratio within this report. A 'modification' of consent is not required to be assessed pursuant to Clause 4.6 (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163*) whereby legal precedence established that Section 96 [now section 4.55] is a 'free-standing provision' [of the Act], meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". Meaning that Section 96 [Clause 4.55] does not rely upon having any SEPP 1 objection or Clause 4.6 variation in order to enliven or validate that power to assess and approve a variation to a development standard sought via a modification application.

Manly LEP Note: "*The **site area** is taken to be: if the proposed development is to be carried out on only one lot, the area of that lot*". Therefore, while the variation to proposed Lot 11 is 18.2% the variation to the site as a whole is 9.7% due to the differences in the balance of site areas between the two Lots.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	N/A
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	N/A
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
6.15 Tourist and visitor accommodation	Yes

Detailed Assessment

4.4 Floor space ratio

A merit assessment pursuant to *Clause 4.4 Floor Space Ratio* in consideration of the modification proposed is provided as follows:

Merit Consideration

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

Comment

The modification maintains consistent building bulk with that approved and is consistent with the streetscape and character of the surrounding development. The proposal maintains compliance with the minimum lot area and a single storey appearance to Rosedale Avenue and part 2 storey appearance to Lauderdale Avenue with a wide landscape setting to this lower street. The changes proposed to the approved building maintain the principal outline of the building footprint with minor changes and no unreasonable impact on the DFC and without creating an adverse precedent with respect to residential bulk and scale for the semi-detached dwellings.

- *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:

The change to the FSR has been achieved by rationalising the approved floor plan to a more practical layout that is suitable for the different floor levels within the building. Landscaped areas are concentrated toward Lauderdale Avenue and the integration and distribution of landscaping around the building with the modifications proposed is consistent with the original development.

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

Comment:

While the proposal will incur a variation to the FSR the external appearance remains consistent with the approved development and compatible with the streetscape for the two proposed dwellings and the FSR variation does not create an inconsistent pattern against the existing pattern and rhythm of building form for surrounding development or character of the area within the subject residential zone.

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

Comment:

The proposal is consistent with the DCP objective to allow for the flexibility in the siting of buildings while allowing for view sharing and maintaining adequate space between buildings including views and vistas from private and public spaces. The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) and providing equitable access to natural light, direct sunlight and air circulation for the proposed dwellings and the surrounding environment. The FSR changes are generally hidden within the footprint of the building space and under the approved roof / hallway areas. In this regard the modification maintains consistency with the Rosedale Avenue is consistent with the pattern of existing garages also in Rosedale Avenue near the site and will maintain safe and adequate traffic conditions, including visibility for car egress and pedestrians.

- *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 proposal is not within business zone and does not contain any business activities.

4.5 Calculation of floor space ratio and site area

MLEP Clause 4.5 (9) states that:

"Covenants to prevent "double dipping"

When development consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot".

In this case development consent has now been granted and the applicant is seeking an increase in FSR for both dwellings. In support of the proposal the FSR was taken against the whole of the site as the smaller proposed lot would have a much greater variation but the existing land area was sufficient to enable compliance. Infilling of sections in the lower ground floor level seeks to re-introduce elements that were taken out for the DA from the pre-lodgement consideration. The modification seeks to reconfigure elements with the floor area but they rely on previous concern of excavation / undercroft area dug into the front setback.

In addition to the above a modification of consent is a 'self contained' assessment and case law does not require the variation to the development standard of FSR to be subject to the rigorous formal

assessment considerations of Clause 4.6. In addition to this elements of the proposal that are not changing are not subject to further assessment or conditions in that the applicant has not sought to alter that specific element of the approval. The merits of the modification are considered in context of the details proposed for those changes only, and condition for "double dipping" is not warranted as the site is unsuitable to transfer FSR due to the development design being a "pair" of semi-detached dwellings.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area:	Requirement	Approved	Proposed	Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 300sqm	D4 Residential Area	No change	N/A	Yes
		Dwelling 70B - proposed	No change	N/A	Yes
		Lot 10: 364sqm	No change	N/A	Yes
		Dwelling 70A - proposed Lot 11: 303.1sqm			
	Dwelling Size: Minimum 90sqm	Dwelling 70B - 162 sqm	Dwelling 70B - 187 sqm	N/A	Yes
		Dwelling 70A - 156 sqm	Dwelling 70A - 179 sqm	N/A	Yes
4.1.2.1 Wall Height*	North Elevation: 8.0m (based on site gradient 1:4)	4.0m	No change	N/A	Yes
	South Elevation: 8.0m (based on site gradient 1:4)	8.2m	No change	As approved	No*
	East Elevation: 8.0m (based on site gradient 1:4)	8.3m	No change	As approved	No*
	West Elevation: 8.0m (based site gradient 1:4)	8.3m	No change	N/A	No*
4.1.2.2 Number of Storeys	2	2* (*plus basement lift	No change	N/A	Yes*

		access / stairway and subfloor storage)			
4.1.2.3 Roof Height	Height: 2.5m	1.13m	No change	N/A	Yes
	Parapet Height: 0.6m	0.6m	No change	N/A	Yes
	Pitch: maximum 35 degrees	3 to 14 degrees	No change	N/A	Yes
4.1.4.1 Street Front Setbacks (Lauderdale Avenue)	Prevailing building line / 6m (Lauderdale Avenue)	Consistent with prevailing setback	No change	N/A	Yes*
4.1.4.2 Side Setbacks and Secondary Street Frontages (Rosedale Avenue)	Windows: 3.0m	3.2m to 5.2m (West)	2.1m to 5.2m	30%	No (Bathroom window)
	Wall 1:3	4.9m to 6.8m (East)	1.9m to 5.3m	36%	No (Bathroom window)
		2.1m to 5.2m (West)	No change	As approved	Yes
		1.3m to 5.3m (East)	No change		Yes
	Secondary street frontage: (Rosedale)	Consistent with prevailing setback	No change	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% of site area (Total site area sqm)	423sqm Site total 63%	No change	N/A	Yes
	Residential Open Space Area: OS3	45 sqm 14.8%	No change	N/A	Yes
4.1.5.2 Landscaped Area (500sqm to	Landscaped area 35% of open	258.8 sqm 38%	120.2sqm (70A)	N/A	Yes

800sqm site area) (Total site area 667.1sqm)	space		138.6sqm (70B) 258.8sqm (total LOS)	N/A	Yes
	3 native trees	3 trees	No change	N/A	Yes
4.1.5.3 Private Open Space	18 sqm per dwelling	227 sqm Dwelling 70A	213sqm	N/A	Yes
		269 sqm Dwelling 70B	256sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas*	Maximum 50% of frontage up to maximum 6.2m	6.0m garage x 2 lots 12m / 22.9m frontage to Rosedale Ave (site has two frontages)	No change	As approved	No*
Schedule 3 Parking and Access	2 spaces per dwelling	2 spaces per dwelling	No change	N/A	Yes

* Refer to detailed merit assessment under the heading 'Built Form Controls' within this report.

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
3.3.3 Footpath Tree Planting	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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 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 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Specific privacy requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows for the modification:

Merit Assessment Comments:

- The modified proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size and placement, including use of narrow or translucent or obscured glass windows to maximise privacy and where necessary the use of screening devices, wall treatments and landscaping.
- Where walls are close to the adjacent boundaries of No. 68 Lauderdale or No. 72 Lauderdale windows are off-set where practicable or designed to ensure no unreasonable impact on the

adjacent dwellings with regard to viewing. The bathroom window location, size and glazing are acceptable for the surrounding residential living environment. The building separation and landscaping is also provided to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment.

- The proposed modification to the approved dwellings of No. 70A and No. 70B have been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual) including the use of fixed screening between spaced buildings so that direct viewing is reduced. Submission issues have been addressed by existing conditions or details shown on the modification plans.
- Landscaping and privacy screening devices have been incorporated to mitigate direct viewing between windows and/or outdoor living areas of adjacent buildings. Overall the modified proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedrooms areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted.

In summary, the design of the proposed new dwellings provided with the modification maintains a balanced outlook and views from habitable rooms, undercroft areas and private open space with appropriate security.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The DCP height requirements and objectives, pursuant to *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)*, are addressed as follows for the modification:

Merit Assessment Comments:

- The proposal has been marginally lowered for the modification as detailed on the modification plans and the changes are consistent with the original development and not unreasonable or excessive such that they create any unreasonable impacts on view, amenity, overshadowing or building bulk and scale.
- The building presents the same for the modification as single storey when viewed from Rosedale Avenue and two storeys within a sub-floor entry when viewed from Lauderdale Avenue with a Ground Level access at grade.
- The requirements of this clause permit roof parapets to extend up to 0.6m above the actual wall height and the applicant has incorporated the lower height (RL43.5) as per condition No 7 "Amendments to the approved plans", of the development consent conditions, to maintain a minimal impact on views and amenity to adjacent land. The garage roof has also been reduced from RL 44.64 to RL 44.39 (lowered by 250mm).
- In summary, the modified proposal is considered to be of a satisfactory architectural design and built form which is substantially the same with regard to wall height considerations pursuant to the Manly DCP. The changes to selected elements of the external walls do not create any unreasonable impacts of overshadowing, views, bulk or general amenity to adjacent land.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the modification proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

Floor space requirements requirements and objectives, pursuant to *Clause 4.1.3 Floor Space Ratio*, are addressed as follows for the modification:

Merit Assessment Comments:

- The proposed building on the existing site area no longer complies with the FSR control of 0.5:1. The increased FSR is now 0.548:1 (9.7% variation), however when split between the two proposed lots, the FSR is non-compliant for proposed Lot 11 is 0.516:1 due to the narrower lot depth and irregular lot shape. In this regard, it is noted that the Manly LEP calculates FSR based on the whole of the site area. Overall, the scale of development as modified is substantially the same and does not unreasonably obscure important landscape features as the proposal maintains a single storey appearance from Rosedale Avenue and is compatible in height and scale to adjacent buildings when viewed from Lauderdale Avenue
- The non-compliance with the FSR for the modification proposed does not create an unreasonable disruption to views for adjacent and nearby development as the design of the building (being designed as semi-detached dwellings) maintains a low building roof profile and reasonable side setbacks. The modification maintains consistency with the surrounding bulk and scale of dwellings in the vicinity (visual catchment) of the site and maintains compliant landscape open space that is proportionate to the DCP requirements for lots sizes to be of sufficient dimensions and area to maintain a landscape setting for dwelling houses. The modification maintains consistency with this control.
- The modification to the FSR does not create any unreasonable impact on sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development. This is attributed to a minor lowering of the height of the building as detailed in the description of the proposal and modification plans.

In summary, the proposal is considered to maintain consistency with the FSR objectives pursuant to this clause.

Note: The objective of Manly LEP objectives at clause 4.4(1) have been also considered in context of the DCP requirements.

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

Setback requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

Merit Assessment Comments:

- The modified proposal has maintained the existing streetscape, including the desired spatial residential proportions of the street, including the street edge and the landscape character of the

street for Lauderdale Avenue, to which the property is addressed, and will also have pedestrian access from Lauderdale Avenue (as approved).

- The modified proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) and providing equitable access to natural light, direct sunlight and air circulation for the proposed dwellings and the surrounding environment. In this regard, setbacks of 1.9m to 2.1m including recessed elements and breaks in the side walls, despite the new outer wall section maintains consistency with the approved bulk and scale. Building separation is 5.0m to 5.6m along the side setbacks or wider with the non-compliance to the side boundary envelope unchanged and limited to the upper corner of the side elevation (screen elements / parapet) at the southern end of the building (low side of these site fronting Lauderdale Avenue).
- The modification of the proposal does not alter the garage carparking area and minor changes are proposed to the subfloor storage only.
- Adequate side setbacks have been maintained with the modification including integrating stairs and natural features of landscaping including deep soil zones and appropriate planting subject to conditions already applied under the original consent. The setbacks will maintain requirements for *Building Code of Australia* considerations of access, drainage work and emergency requirements (fire safety). The modification does not detract from the context of the site and particularly in relation to street frontages and front and side setbacks including the context of neighbouring properties and the prevailing building lines in the immediate vicinity.
- The modification maintains consistency with the pattern of significant areas of landscaped open space despite the minor change and includes smaller elements of landscaping along side setbacks to provide visual interest and amenity and for the garage entry areas.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed modification of the development is consistent with the MDCP and the objectives specified in section 1.3 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the modification proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 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

The modification work proposed to the approved semi-detached dwellings are considered to be suitable and appropriate and are in context with the residential scale and intensity of approved development in terms of the General Residential zone. Principal environmental impact considerations in the original application were views, bulk, landscaping, traffic and parking access, building height (including walls and envelope), privacy, overshadowing, urban character, construction impacts (during works) and stormwater management. The modification seeks to rationalize selected elements of the floor plan with minor changes to wall sections, undercroft areas and selected windows and roof elements for the building. The variation to the FSR has been considered on merit and is supported having been assessed in detail against the relevant LEP and DCP objectives.

The public submissions received in the original development application have been reviewed in the context of the modification and submissions received with this modification have been addressed. Amended conditions have been applied where appropriate to address those concerns, including; fan noise, glazing, privacy. Wider considerations of building bulk, streetscape, DFC, FSR, height, overshadowing, views, traffic safety, parking, access and stormwater have also been reviewed in the context of the modification.

The modification proposal will not have an unreasonable impact in relation to view sharing considerations from adjacent and nearby properties in Rosedale Avenue and Lauderdale Avenue as the proposal has incorporated minor changes to assist in lowering selected parts of the building. Additional amenity impacts such as may commonly arise during construction works are addressed by existing standard conditions (including dilapidation, dust, noise, site management and the like). No change is required to the existing conditions of consent for stormwater engineering, vehicle access or landscape related issues.

During the modification assessment period, no changes were made by the applicant that would require re-notification and some supplementary information was provided to further assist in addressing submission issues with No 72 Lauderdale Avenue. Modified conditions have included both the east and west elevations for consistency in addressing the same issues re privacy, noise as the two semi detached dwellings are near identical floor plans.

The requirements of the Manly LEP and Manly DCP apply and in this regard matters relating to desired future character, setbacks, building envelope, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed in the original DA report and also under this modification assessment as relevant. In this case, the non-compliances with the FSR, setbacks and landscaping controls are addressed in accordance with the objectives and requirements of those considerations.

The proposed modification is justified and supported on the basis that:

- The proposed works are generally consistent with the application as approved and will not comprise the amenity of the subject or neighbouring properties.
- The proposal is “substantially” the same development, as defined by the Environmental Planning & Assessment Act 1979.

The modifications will result in a development which remains generally as approved, for the same purpose and with no substantive modifications to the physical appearance of the approved building.

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. Mod2020/0498 for Modification of Development Consent DA2020/0092 granted for demolition of existing structures, construction of two (2) semi-detached dwellings and Torrens title subdivision of one lot into two on land at Lot 1 DP 965132,70 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

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

"1A - Modification of Consent - Approved Plans and supporting Documentation

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
S4.55 01 Site Plan	Sept 2020	Marston Architects
S4.55 02 Roof Plan	Sept 2020	Marston Architects

S4.55 03 Upper Ground Plan	Sept 2020	Marston Architects
S4.55 04A Lower Ground Floor Plan	2.11.2020	Marston Architects
S4.55 05 Basement Plan	Sept 2020	Marston Architects
S4.55 06 South Elevation	Sept 2020	Marston Architects
S4.55 07 North Elevation	Sept 2020	Marston Architects
S4.55 08A West Elevation	2.11.2020	Marston Architects
S4.55 09 East Elevation	Sept 2020	Marston Architects
S3.55 10 Section	Sept 2020	Marston Architects
Window / Door Schedule 70 Lauderdale Avenue	31.8.2020	Marston Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report 2019-155.1	18.9.2020	Crozier Geotechnical Consultants
Basix Certificate 1065858M_03	24.9.2020	Brian Teplicanec Consultancy

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
Sheet 1 of 2 Landscape Planting Plan	11.9.2020	Woodside
Sheet 2 of 2 Landscape Planting Plan	11.9.2020	Woodside

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

B. Modify Condition 7 Amendments to the approved plans, to read as follows:

"7. Amendments to the approved plans

i) The maximum height of the building along the southern parapet edge and roof area for the living rooms and adjacent terraces of proposed dwelling 70A and 70B is to be RL43.50 in order to improve view impacts from dwellings overlooking the site in Rosedale Avenue.

ii) Bathroom window "Bath 1" to the eastern and western external wall must be opaque glass.

iii) The eastern and western "bath 1" external fan exhaust vent shall be fitted at 1.6m (or lower) measured above finished ground level and externally shielded by a grille/ hood directing exhausted air and noise downward.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: Residential amenity"