

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2019/0499
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<b>Responsible Officer:</b>	Renee Ezzy
<b>Land to be developed (Address):</b>	Lot CP SP 10040, 46 Victoria Parade MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent No. DA367/2010 granted for demolition of an existing building and construction of a 7 storey Residential Flat Building containing 11 units with 2 levels of basement carparking and associated decks and landscaping
<b>Zoning:</b>	Manly LEP2013 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Proprietors of Strata Plan 10040
<b>Applicant:</b>	Mod Urban Pty Ltd

<b>Application Lodged:</b>	16/10/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	30/10/2019 to 13/11/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	8
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This report provides an assessment for a modification application for a five (5) storey residential flat building with basement parking.

The original consent was issued by the NSW Land and Environment Court on 23 December 2011 for a residential flat building containing 13 apartments with basement parking for 18 cars. The consent contained specific conditions relating to the maintenance of amenity through the rear setback of the building and the roof design.

On 29 July 2019 the Northern Beaches Local Planning Panel (NBLPP) approved a previous modification application (MOD21019/0029), which modified the building layout, roof design and reduced the number of apartments from 13 to 11.

The assessment of the current proposed modifications to delete eight (8) conditions from the consent has concluded that most of the conditions sought to be deleted can be supported, however it is recommended that Conditions No. 96, 97 and 100 should be retained and the wording amended on Condition 96 and 100 to reflect the current status of the approved development.

The site is zoned R3 Medium Density Residential under Manly Local Environmental Plan 2013 (MLEP 2013). Development for the purposes of a "Residential Flat Building" is permissible with consent.

The application was advertised and notified in accordance with the Manly Development Control Plan 2013 (MDCP 2013) and seven (7) submissions were received. The application is referred to the NBLPP for determination due to the Panels previous involvement in the approval of the proposed development.

## PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks approval to delete the following conditions from Development Consent No. 367/2010:

Condition No.	Condition	Applicants Reason for Deletion	Assessment Comment
94	The privacy screens separating terraces of Units 3 & 4 at Level 1, terraces of Units 5 & 6 at level 2, and terraces of Units 9 & 10 at Level 3 are to be a maximum 1.0 metre high for the first 1.0 metre from the front edge of the balconies. Plans are to be suitably amended/detailed prior to the issue of the Construction Certificate (CC).  Reason: To reduce impacts on the amenity of the adjoining residential properties and reduce the visual bulk and scale of the building	The approved Level 1 apartment (1A) replaces previously approved Units 3 and 4. Therefore, as Unit 1A has its own balcony, that is not shared with any other apartments, then the requirement for privacy screening is no longer required.  The recently modified (Mod2019/0029) Level 2 and Level 3 apartments incorporate privacy screening where there are shared balcony arrangements.	<b>SUPPORTED</b> The deletion of this condition is supported.
96	Access to the planter area adjacent to the lift lobby, stair and Bedroom 2 at Level 4 is to be for service and maintenance purposes only. The access doors must be locked at all other times. The keys are to be held by maintenance staff and the Owners' Corporation executive only.  Reason: To reduce impacts on the amenity of adjoining residential properties.	The Level 4 apartment in question in relation to the condition has changed and there is no longer a Bedroom 2 abutting the feature balcony on Level 4.  The balcony can now be accessed via the common lobby on Level 4. As the balcony has common area access, it will be easily accessed and maintained by the building manager.	<b>NOT SUPPORTED</b> The deletion of this condition is not supported. Amended wording has been recommended in relation to retention of this condition.

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|----|--|--|--|
| 97 | <p>The level at the top of the headlight cut-off wall adjoining the driveway shall be RL7.450. Plans being suitably notated prior to the issue of the CC.</p> <p>Reason: To reduce impacts on the amenity of adjoining residential properties.</p> | <p>The RL of the structural wall is consistent with this approved condition, and was designed to accommodate this requirement. The condition currently provided for by the modified plans as approved, satisfied this condition.</p> <p>As the structure covers this part of the ramp, the condition needs to be deleted, and replaced with wording to the effect of "<i>The structural wall to a height of RL7.450 as shown on the approved plan 2424-A103 Rev A shall be maintained to minimise impacts from headlight glare to the adjoining residential properties</i>".</p> <p>There is sufficient detail on the stamped plans that demonstrate this condition is now achieved.</p> | <p><b>NOT SUPPORTED</b></p> <p>The deletion of this condition is not supported as suitable justification has not been provided. This condition is to remain in its current form.</p> |
| 98 | <p>The Level 3 obscure glass balcony divider shall be 1.8 metres above finished balcony floor level.</p> <p>Reason: To reduce impacts on the amenity of adjoining residential properties.</p>  | <p>The recently modified (Mod2019/0029) Level 3 apartments no longer have a shared balcony arrangement so the need to incorporate privacy screening where there are shared balcony arrangements is redundant.</p> <p>The condition should be deleted as it is no longer required and redundant given the recent modifications approved for the development.</p>  | <p><b>SUPPORTED</b></p> <p>The deletion of this condition is supported.</p>  |
| 99 | <p>The northern balcony obscure glass divider on Level 3 if supported by framing shall be no more than 75mm in overall plan width.</p> <p>Reason: To reduce impacts on the amenity of adjoining residential properties.</p>                        | <p>The recently modified consent (Mod2019/0029) Level 3 apartments no longer have a shared balcony arrangement so the need to incorporate privacy screening where there are shared balcony arrangements is redundant.</p> <p>The condition should be deleted as it is no longer required and redundant given the recent</p>  | <p><b>SUPPORTED</b></p> <p>The deletion of this condition is supported.</p>  |

modifications approved for the development.

100	<p>The obscure glass screens to the west end of the rear balconies shall each be 1.6 metres high above each finished balcony floor level.</p> <p>Reason: To reduce impacts on the amenity of adjoining residential properties.</p>	<p>The recently modified consent (Mod2019/0029) has approved glass balustrades to 1.0m high to the rear balconies.</p> <p>The current approved modification provides for an improved outcome.</p> <p>The condition is no longer relevant and should be deleted.</p>	<p><b>NOT SUPPORTED</b></p> <p>The deletion of this condition is not supported. Amended wording has been recommended with the retention of this condition.</p>
103	<p>The proposed privacy screen separating the terraces of Units 9 &amp; 10 at Level 3 is to terminate at the same point as the Level 4 terrace/planter above.</p> <p>Reason: To reduce impacts on the amenity of adjoining residential properties.</p>	<p>The recently modified (Mod2019/0029) Level 3 apartments no longer have a shared balcony arrangement so the need to incorporate privacy screening where there are shared balcony arrangements is redundant.</p> <p>The condition should be deleted as it is now redundant given the recent modifications approved for the development.</p>	<p><b>SUPPORTED</b></p> <p>The deletion of this condition is supported.</p>
119	<p>The solid balustrade on western elevation of Level 4 at RL17.265 which is related to the lobby area of Units 12 &amp; 13 is to be replaced with a clear glass balustrade so as to remove the proposed planter.</p> <p>Reason: To protect the amenity of neighbours.</p>	<p>The balustrade on the western elevation of Level 4 is now a glass balustrade as recently modified (Mod2019/0029).</p>	<p><b>SUPPORTED</b></p> <p>The deletion of this condition is supported.</p>

## 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

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot CP SP 10040 , 46 Victoria Parade MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The site is located on the south-eastern side of Victoria Parade, Manly and has a north-western to south-eastern orientation. It is legally described as Strata Plan 10040, No. 46 Victoria Parade, Manly.</p> <p>The site is level and is a rectangular shape. It is 14.56 m wide (at the Victoria Parade frontage) with side boundaries being 42.06 metres. The rear of the site is 14.585 metres wide. It adjoins a heritage-listed electricity substation (No 16124).</p> <p>The substation shares a boundary of 9.265 metres with the subject site. The remainder of the rear boundary and the adjacent north-eastern side boundary adjoin Dungowan Lane. Total site area is approximately 612.8m<sup>2</sup>.</p> <p>The approved development is currently under construction with the building works nearing completion.</p> <p><b>Surrounding Development</b></p> <ul style="list-style-type: none"> <li>• To the north-east: No. 14 South Steyne (heritage listed) and a multi-storey hotel building.</li> <li>• To the south-east: A one-storey sub-station and adjacent to that, a multi-storey hotel building.</li> <li>• To the south-west: No. 42-44 Victoria Parade (Pacific Harbour), a five-storey residential flat building of twenty (20) units.</li> <li>• Opposite the site are several heritage listed buildings which back onto the Royal Far West complex.</li> <li>• The street trees of Victoria Parade have environmental heritage status.</li> </ul>



Map:



## SITE HISTORY

### 21 April 2011

Development Application No. DA367/2010 for a seven (7) storey residential flat building containing eleven (11) units and two (2) levels of basement parking for eighteen (18) vehicles was refused by the Manly Independent Assessment Panel (MIAP) on 21 April 2011.

### 22 July 2011

Section 82A Review of Determination against refusal of DA367/2010 was lodged. The application had been amended to a six (6) storey residential flat building with ten (10) apartments and one level of basement car parking for ten (10) vehicles.

### 12 October 2011

Land and Environment Court appeal lodged for the 'Deemed Refusal' of the S82A review.

### 23 December 2011

DA367/2010 was approved through a Section 34 agreement and consent orders issued by the NSW Land and Environment Court.

### 17 September 2012

DA367/2010/2 - Section 34 agreement for S96 modification to consent for a 5 storey residential flat building with basement carparking for 18 cars.

### 21 August 2014

DA367/2010/3 - This modification of the court consent (S96AA) was approved by MIAP.

### 4 December 2018

MOD2018/0294 - This S4.56 modification application of DA367/2010 (court consent) was refused by the NBLPP for the following reasons:

- The information provided with the modification application was insufficient to enable a

proper assessment of the shadow impacts on the adjoining property to the west, number 42 – 44 Victoria Parade Manly.

- The information provided with the modification application was insufficient to enable a proper assessment of the proposed ceiling heights and roof form of the building.

#### **MOD2019/0029**

This S4.56 modification application for internal and external alterations was approved by the NBLPP on 29 July 2019.

#### **MOD2019/0499 (CURRENT APPLICATION)**

This s4.56 modification application was lodged with Council on 16 October 2019 to delete condition Nos. 94, 96, 97, 98, 99, 100, 103, and 119. This application is the subject of this assessment report.

### **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 DA 367/2010, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
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 proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The conditions to be deleted do not impact on the development or the amenity of adjoining properties;</li> <li>• The conditions to be modified maintain the intent of the condition as it relates to the</li> </ul>

Section 4.55(1A) - Other Modifications	Comments
	<p>development.</p> <ul style="list-style-type: none"> <li>•</li> </ul>
<p>(b) 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>	<p><b>Yes</b></p> <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 DA367/2010 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The deletion of Conditions 94, 98, 99, 103, and 119 do not change the development as it is approved being a five (5) storey residential flat building with basement parking. further, the built form is not materially changed as a result of the deletion of these conditions.</li> <li>• The modification of Conditions 96 and 100 ensures that privacy to the adjoining property is protected beyond the construction period of the development and will remain relevant in perpetuity.</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan 2011.</p>
<p>(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.</p>	<p>See discussion on "Notification &amp; Submissions Received" in this report.</p>

#### 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 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and



Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>

Section 4.15 'Matters for Consideration'	Comments
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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

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 DA367/2010, in full, with amendments detailed and assessed as follows:

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

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

relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Rodney Garratt	8 / 7 South Steyne MANLY NSW 2095
Mr Graham John Butson Mrs Peta Vivienne Butson	5 / 42 Victoria Parade MANLY NSW 2095
Mr David Leslie Schmidt	7 Hendy Avenue COLLAROY NSW 2097
Loafer Pty Ltd	C/- Clerk 'S' - Rodney Mark Garratt 205 William Street MELBOURNE NSW 3000
Ann Fernance	Address Unknown
Mr Geoffrey Alistair Kaye Ms Ann Beth Hatton	16 / 42 Victoria Parade MANLY NSW 2095
Mr Michael Edwyn West	9 / 42 Victoria Parade MANLY NSW 2095
Ms Sheridan May Nossiter	14 / 7 South Steyne MANLY NSW 2095

The following issues were raised in the submissions:

- **Retention of Conditions 96, 97, 100 and 119 (proposed to be deleted)**
- **Changes to the development shown in drawings submitted with this application which haven't been approved**
- **Carpark roller door security shutter**
- **Traffic in Dungowan Lane**
- **Blast wall**
- **Shutters incorporated onto plans submitted**

The matters raised within the submissions are addressed as follows:

- **Retention of Conditions 96, 97, 100 and 119**  
*Developer agreed to retain these conditions as part of the previous application (MOD2019/0029). Request they be retained with amendments.*

Comment:

**Current Condition 96**

*Access to the planter area adjacent to the lift lobby, stair and Bedroom 2 at Level 4 is to be for service and maintenance purposes only. The access doors must be locked at all other times. The keys are to be held by maintenance staff and the Owners' Corporation executive only.*

*Reason: To reduce impacts on the amenity of adjoining residential properties.*

The balcony at Level 4 on the western side of the building was provided to ensure maintenance of the planter box could be provided, and this area was not meant for use for any other purpose. While the internal configuration of Level 4 has changed and no longer includes a bedroom with an adjoining wall to the balcony, the general use of this space overlooking neighbouring property balconies is not considered to meet the objective of the condition to reduce impact on adjoining properties. Accordingly, it is recommended that the condition be amended to remove the reference to the stair and bedroom to reflect the current arrangements and not deleted. The amended condition wording would therefore read:

**Amended Condition 96**

*Access to the balcony area adjacent to the lift at Level 4 on the western side of the building is to be for service and maintenance purposes only. The access doors must be locked at all other times. The keys are to be held by maintenance staff and the Owners' Corporation executive only.*

*Reason: To reduce impacts on the amenity of adjoining residential properties.*

**Current Condition 97**

*The level at the top of the headlight cut-off wall adjoining the driveway shall be RL7.450. Plans being suitably notated prior to the issue of the CC.*

*Reason: To reduce impacts on the amenity of adjoining residential properties.*

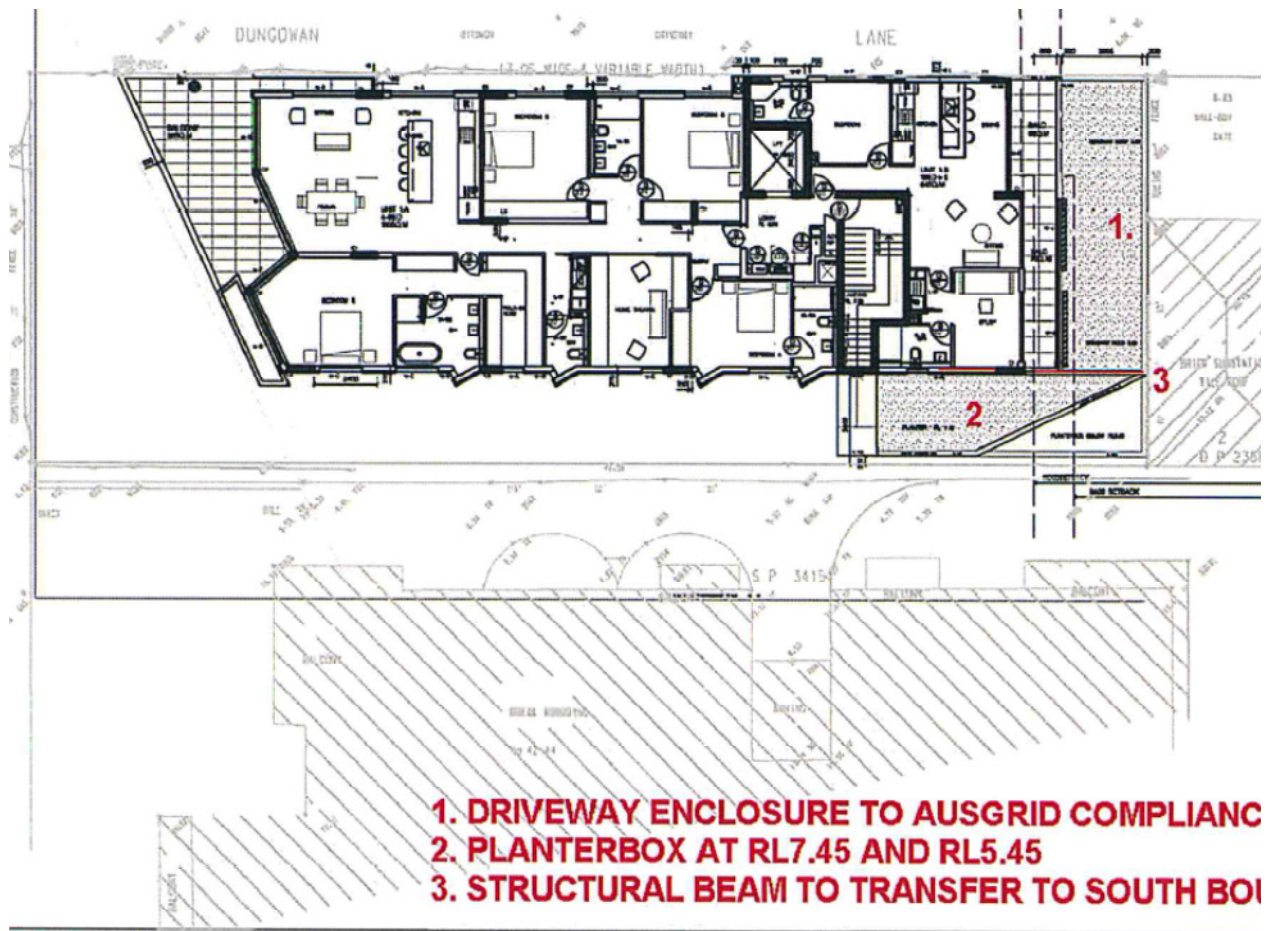
The wording of this condition is proposed to be amended by the Applicant to read:

*The structural wall to a height of RL7.450 as shown on the approved plan 2424-A103 rev A shall be maintained to minimise impacts from headlight glare to the adjoining residential properties.*

The submissions received state that the new drawing No. 2424-A203 8 "West Elevation" supplied with this application now shows there is to be a planter box put on top of this RL 7.45 which is not in the condition.

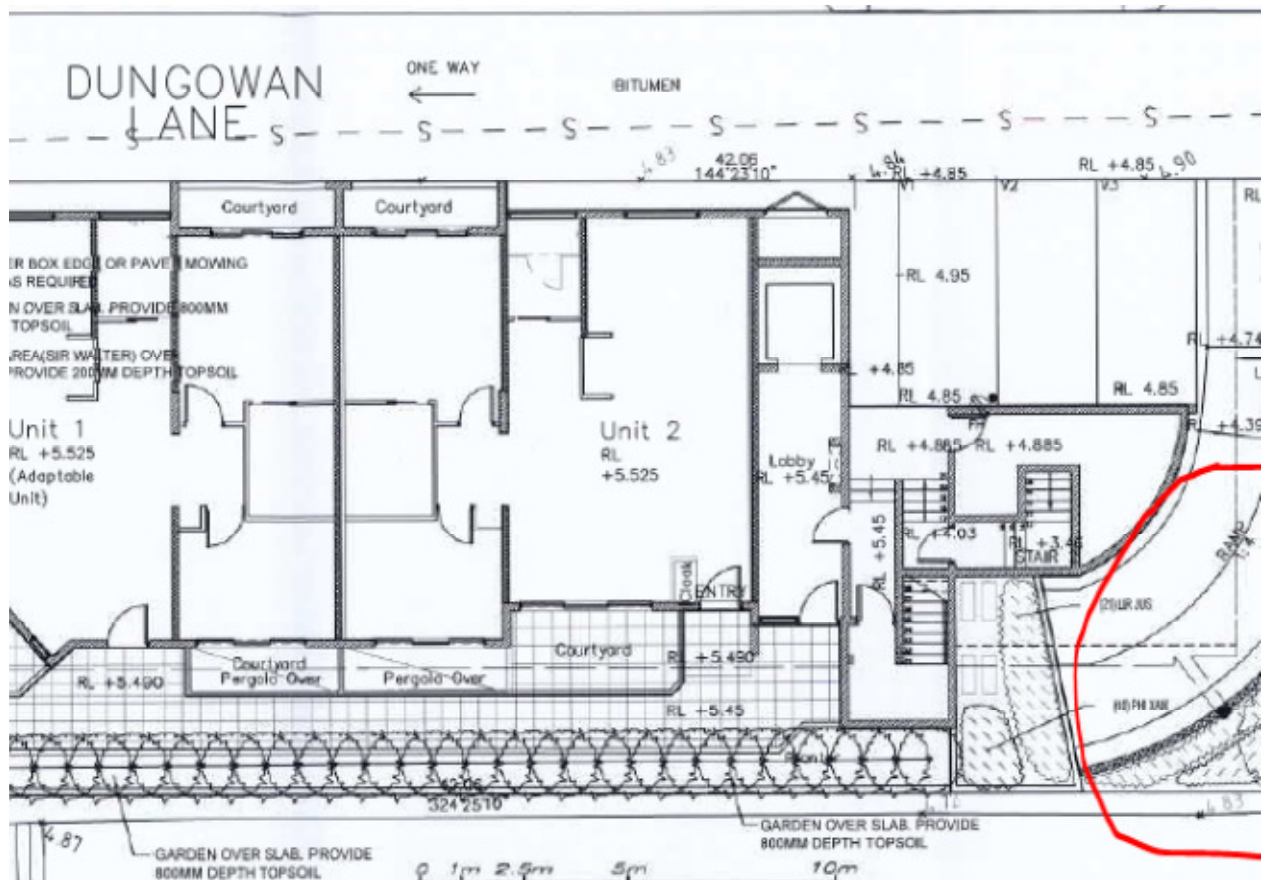
The application as lodged with Council, clearly states that the extent of modification proposed is limited to deletion of superfluous conditions on the consent. The application was however accompanied by a set of drawings which are not referenced and show plans of the original consent and plans from the previously approved modification (MOD2019/0029) with new notations in red. The notations on each plan list items some of which were included on the previous consent, however there are new items (modifications to the plans) which are neither identified on the application or within the accompanying Statement of Environmental Effects.

In relation to the issues raised with this condition, the plans submitted provide the following reference to a new planter **"2. Planterbox at RL 7.45 and RL 5.45"**



Planting in the south-west corner of the site at RL 5.45 was previously approved as part of the Court's Consent and modified in 2014 (Drawing No 1304-LP1 - Landscape Plan-Ground Level Issue G dated January 2014). See part plan below referencing planting in that location.





The residents submission in relation to this element, claims that anything in this location that adds additional height would be in complete view of their apartment and would create more visual bulk and block airflow.

As this item has not been identified as a formal change to the plan and no detail has been provided to inform what this might look like or potential impacts, the change to this condition cannot be supported. It is recommended that this condition be retained as imposed.

#### **Current Condition 100**

*The obscure glass screens to the west end of the rear balconies shall each be 1.6 metres high above each finished balcony floor level.*

*Reason: To reduce impacts on the amenity of adjoining residential properties.*

The applicant's response to this condition states:

*The recently modified consent (Mod2019/0029) has approved glass balustrades to 1.0m to the rear balconies. The current approved modification provides for an improved outcome. The condition is no longer relevant and should be deleted.*

The area referred to in this condition is the western ends of the south facing balconies at the rear of the development adjoining Units 1B, 2C, 3C and 4B. This screening was required to reduce the opportunity for overlooking into the private open space of the adjacent apartments within No. 42-44 Victoria Parade. At the time of inspection, the building had installed opaque glass screening to Level 1 and Level 2, thus satisfying this requirement. No screening had been installed to Level 1 or Level 2. Accordingly, it is considered that this condition has not been satisfied in its intent, so it should be retained and the wording modified to say:

**Amended Condition 100**

*Obscure glass screening at the western end of all of the rear balconies shall be installed and maintained in perpetuity at a height of at least 1.6 metres high above the finished balcony floor level.*

*Reason: To reduce impacts on the amenity of adjoining residential properties.*

**Current Condition 119**

*The solid balustrade on western elevation of Level 4 at RL17.265 which is related to the lobby area of Units 12 & 13 is to be replaced with a clear glass balustrade so as to remove the proposed planter.*

*Reason: To protect the amenity of neighbours.*

The residents submission raised concerns in relation to the deletion of this condition was imposed by MIAP in 2014 to allow solar access to Units 1, 5 and 9 during winter through the removal of the planter. The retention of this condition is considered unnecessary as the balcony has been constructed with clear glazing to the balustrade. The minor change to floor levels approved by a previous modification (MOD2019/0029) has no further relevance to this issue.

Removal of this condition is supported.

- **Level 4 stairwell not being built in accordance with approved drawing 2424-A111 A.**

*A new solid concrete wall has been built to almost roof height. It divides the open 'cut-out' balcony and the stairwell sloped at 33 degrees. This wall needs to be removed or sloped at 33 degrees to match the new stairwell roof line and allow solar access to adjoining neighbours as per the intention of 2 x LEC 2011/2012 hearings and MIAP in 2014.*



Aerial photo of the Site (dark grey roof) - Source: Nearmap

Comment:

The area of concern raised in this residents submission is identified in the aerial photo above and has already been constructed. This issue is now a matter for the Private Certifier to address and is beyond the scope of this modification application. The concern has been forwarded to Council's Building Compliance Manager for information and follow up.

- **Changes to the development shown in drawings submitted with this application which haven't been approved.**

Comment:

As discussed under Condition 97 above, the application does not seek any new modifications to the development beyond the deletion of conditions. It is unclear why the plans submitted with the application were provided. No consent is recommended or implied in this assessment for anything beyond the consideration to delete conditions from the consent. Any inconsistencies on the drawings submitted with the modification should be disregarded.

- **Carpark Security Roller Shutter**

*It was understood there would be no driveway roof over the rear of the ramp and no security roller door on Dungowan Lane. Any roller door should be placed at the underground entrance to the basement carpark so as to avoid congestion at the top of the ramp.*



Comment:

This matter is not a consideration for this modification application. A separate application (MOD2020/0037) has been lodged to address changes to the development including; the location of the carpark roller shutter. Assessment of this issue will be undertaken as part of that application and is not relevant to the current application.

- **Traffic in Dungowan Lane**

*Dungowan Lane is blocked several times a day by service vehicles associated with the Sebel. Consideration should be give to changing the traffic direction within the Lane.*

Comment: This matter is beyond the scope for consideration under this application. A separate submission should be made to Council's Traffic Section and considered by the Traffic Committee in order to seek changes to the existing traffic arrangements in the lane.

- **Blast Wall**

*This wall is considered dangerous for traffic exiting the site. Vehicles will need to move into Dungowan Lane to see traffic coming from the right.*

*If this wall is necessary for the protection of residents in 46 Victoria Parade, why has Council not insisted the residents of 42 Victoria Parade, residents of the Dungowan and Sebel buildings also be protected?*

*What is the reality of the sub station exploding?*

Comment:

This matter is not a consideration for this modification application. The requirement for a blast wall is one imposed by Ausgrid under SEPP Infrastructure.

- **Shutters incorporated into plans submitted**

*There appears to be shutters extending past the rear south balconies into the already reduced setback on Levels 1 and 2.*

Comment:

This submission makes reference to the plans submitted with this application referencing unapproved building changes. This issue is dealt with in detail above. No modifications to the approved development are proposed by this application.

## REFERRALS

No referrals were sent in relation to this application

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment,

many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use. Furthermore, the contamination issues associated with this development were considered as part of the original approval.

### **SEPP 65 - Design Quality of Residential Apartment Development**

This application is for the modification of development consent to delete eight (8) conditions of consent. The modifications and deletion of certain conditions will not materially alter the design of the development to an extent that the proposal deviates from the original assessment and conclusions made under DA367/2010/Part 3. The proposed modifications do not change the developments design quality in terms of the design quality principles.

### **SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

#### **10 Development on certain land within coastal wetlands and littoral rainforests area**

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
  - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
  - (c) *the carrying out of any of the following:*
    - (i) *earthworks (including the depositing of material on land),*
    - (ii) *constructing a levee,*
    - (iii) *draining the land,*
    - (iv) *environmental protection works,*
  - (d) *any other development.*

#### **Comment:**

The site is not identified on the coastal wetlands or littoral rainforest map.



## 11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

### Comment:

The site is not located in proximity to coast wetlands or littoral rainforest.

## 12 Development on land within the coastal vulnerability area

*Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
  - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal*

hazards.

Comment:

The site is not identified within the coastal vulnerability area.

**13 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 site is not located within the coastal environment area.

- (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 subclause (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:

The site is not located within the coastal environment area.

**14 Development on land within the coastal use area**

- (1)
- (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,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) *Aboriginal cultural heritage, practices and places,*

- (v) 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 site is located within the coastal use area. The proposed modifications will not impact on the developments impact on the surrounding coastal and built environment.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

### 15 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:

The proposed modifications are not considered to cause any adverse impact on coastal hazards.

### 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

The proposed modification seeks to delete conditions from Development Consent No. 367/2010 (as modified) and does not include any new works. Accordingly, the Principal Development Standards are not applicable to this application.

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

## Manly Development Control Plan

### Built Form Controls

The proposed modification seeks to delete conditions from the Development Consent No. 367/2010 (as modified) and does not include any new works. Accordingly, the Built Form Controls are not applicable to this application.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

## CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is

considered to be:

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

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 (SEPP 55, SEPP 65, SEPP Coastal Management and SEPP Infrastructure)
- Manly Local Environmental Plan 2011
- Manly Development Control Plan 2011
- Codes and Policies of Council

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects and all other documentation supporting the application and public submissions. The application is considered acceptable subject to the retention and amendment of three (3) of the conditions.

This Clause 4.56 Modification Application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, MLEP 2013 and the relevant codes and policies of Council. This assessment has taken into consideration application form, Statement of Environmental Effects and other documentation submitted with the application and public submissions.

The proposed deletion of five (5) of the eight (8) conditions of development consent sought has been assessed as satisfactory and are supported. Two (2) of the subject conditions (Conditions 96 and 100) are assessed as providing relevant need for retention and have been amended to suit the current status of the approved development. The deletion of Condition 97 has not been suitably justified and is to be retained.

The modification of the development consent is supported, subject to changes and retention of the wording of those conditions and it is recommended that the NBLPP approve the application, in accordance with the changes to the conditions as detailed in this report.

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. Mod2019/0499 for Modification of Development Consent No. DA367/2010 granted for demolition of an existing building and construction of a 7 storey Residential Flat Building containing 11 units with 2 levels of basement carparking and associated decks and landscaping on land at Lot CP SP 10040,46 Victoria Parade, MANLY, subject to the conditions printed below:



**A. Modify Condition 96 to read as follows:**

Access to the balcony area adjacent to the lift at Level 4 on the western side of the building is to be for service and maintenance purposes only. The access doors must be locked at all other times. The keys are to be held by maintenance staff and the Owners' Corporation executive only.

Reason: To reduce impacts on the amenity of adjoining residential properties

**B. Modify Condition 100 to read as follows:**

Obscure glass screening at the western end of all of the rear balconies shall be installed and maintained in perpetuity at a height of at least 1.6 metres high above the finished balcony floor level.

Reason: To reduce impacts on the amenity of adjoining residential properties

**C. Delete Condition 94:**

Condition Deleted

**D. Delete Condition 98:**

Condition Deleted

**E. Delete Condition 99:**

Condition Deleted

**F. Delete Condition 103:**

Condition Deleted

**G. Delete Condition 119:**

Condition Deleted