APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0733

Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot CP SP 11874, 5 Commonwealth Parade MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA 436/2008 granted for alterations and additions to a residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Cecil George Koutsos Isabel Brenda Koutsos Proprietors of Strata Plan 11874
Applicant:	Momentum Project Group Pty Ltd

Application Lodged:	21/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	17/05/2022 to 24/05/2022
Advertised:	06/10/2021
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed development involves the modification to development consent DA436/2008 (as amended) for a four (4) storey residential flat building containing three (3) residential units. Specifically, the changes proposed consist of:

- The entry stair to the building has been revised to allow for a landing between flights;
- Unit 01 has been reconfigured internally to allow for a better amenity;
- The window to bed 3 of unit 01 increased in size and a new window and curved wall added to the ensuite;
- The window to bed 2 of unit 02 increased in size and a new window and a curved wall added to the ensuite;
- The window to bed 3 of unit 02 increased in size and a new window and curved wall added to

the ensuite;
- Unit 03 living area/joinery wall extended marginally;
- A new glass awning along the entry walkway to provide better weather protection;
- Skylight shifted for unit 02 bathroom;
- Unit 03 upper level planter box reduced in height and glass balustrade added;
- Window deleted into Unit 01 Kitchen.
- Planter Lowered to be consistent with other floors with glass balustrade added; and
- new awning over entry walkway

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

Property Description:	Lot CP SP 11874 , 5 Commonwealth Parade MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-western side of Commonwealth Parade. The site is irregular in shape with a frontage of 15.4m along Commonwealth Parade, 9.2m to the Crescent and a depth of 38.8m. The site has a surveyed area of 460m². The site is located within the R1 General Residential zone and accommodates a three storey flat building with vehicular access via an existing driveway from The Crescent to an existing single garage to the rear of the existing dwelling.

	The site slopes approximately 6m from west to east. The adjacent property to the north, at 1-3 Commonwealth Parade, is developed with a three-storey residential development. Development in this area of Commonwealth Parade consist of residential flat buildings between 3 and 7 stories in height. Across the road to the east North Harbour.

Map:

SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA211/2004 - Demolition and construction of a new four-unit residential flat building, and strata subdivision. Approved by DAU on 29 September 2006.

DA436/2008 : Amendment to the basement level design to minimise the environmental impact. Approved by DAU on 3 March 2009.

DA436/2008 – Part 2: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building - involving the conversion of upper level apartment into two apartments - one (1) two (2) bedroom apartment and one (1) one (1) bedroom apartment with changes to the internal wall, door and windows. Withdrawn by the applicant on 13 August 2013.

DA436/2008 – Part 3: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building – involving conversion of a car parking space into a storage area, level 1, 2 and 3 extension, pergola extensions to level 2 and level 3, internal alterations, delete planter box on level 1, addition of an dividing screen and changes to window and doors. Approved by DAU on 9 November 2016.

DA436/2008- Part 4: Section 96 to modify a Residential Flat Building including the following:
-Reduction in four units to three;

-Reduction in parking requirement and introduction of a car stacker;
-Reduction in basement level and adjustment of all other floor levels (increased floor to ceiling height, no additional overall height);
-Changes to windows, doors, façade and eastern balconies;
-Internal reconfiguration;
-Addition of privacy screening to western balconies; and
-Addition of hydrant and drencher booster assembly cupboards.

MOD2018/0161- Section 96(1A) Modification of Development Consent DA0436/2008 granted by Northern Beaches Council for basement additions to a three (3) storey Residential Flat Building. The works included:

Basement
- Relocation of stairs
- Relocation of mechanical services
- Relocation of garbage room
- Additional excavation for car stacker for car lift

Ground Level
- Changes to layout and addition of bedroom/ensuite
- Cut out of slab
- New roof at northern end of room
- Slight increase in floor space to Bedroom 2

First Level
- Changes to internal layout
- Decrease to south side setback and increase at north side setback
- Slight increase in floor space to Bedroom 3

Second Level
- Changes to internal layout
- Slight increase in floor space to Bedroom 3

Third Level
- Changes to internal layout

Roof Level
- Addition of skylights
- Extension of roof to cover extension of lower levels

MOD2018/0575 - Section 4.55 (2) Modification of Development Consent DA436/2008 granted by the Development Determination Panel on 27 February 2019. The modifications can be summarised as internal floor layout changes on each level, narrowing and lengthening of the level three floor area and change from a curved roof to a flat roof.

MOD2020/139 - Section 4.55(1A) of Development Consent DA436/2008 granted by the Council on 10/08/2020. The works included:

Basement Floor Plan

- A 100mm increase in the approved basement slab level to reduce excavation;
- The replacement of the approved car stackers with tandem spaces to reduce excavation;

- The realignment of the Commonwealth Parade entrance stair to improved privacy to Unit 1;
- The adjustments to the entrance ramp; and
- The relocation of the OSD tank.

Ground Level Floor Plan

- Reconfiguration of this floor plate to account for the removal of the car stacker and to improve access, daylight and natural ventilation. No increase in GFA/FSR is proposed; and
- Modifications to balcony design and landscape planter box locations.

Level 1 Floor Plan

- An 80mm increase in the approved slab level;
- The introduction of a skylight over the family room of Unit 1 below and an increase in the size of the
- northern void over enhance the amenity of Unit 1 below; and
- Modification and enhancement of the approved western courtyard including an increase in
- landscaping in this location

Level 2 Floor Plan

- A 170mm increase in the approved slab level.
- Level 3 Floor Plan
- A 260mm increase in the approved slab level; and
- Minor internal reconfiguration works, deletion of the northern hallway window and a reduction in the
- size of the south facing fenestration.

Roof Plan

- A 170mm increase in the approved ridge level and the introduction of a new skylight.

Status of Consent No. DA436/2008

It has been confirmed that Development Consent No. DA436/2008 has not lapsed, therefore, this modification can be dealt with.

<u>Application History</u>
Following the preliminary assessment of the application, Council raised issues in relation to the additional building height and floor space ratio. The applicant provided additional information including amended Plans, amended BASIX certificate, a covering letter which change the application from Section 4.555 (2) to Section 4.55 (1A). The amended plans removed the additional building height and floor space ratio concerns.

The amended plans constitute a reduced environmental impact but was re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP). As result one submission was received.

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 DA436/2008 (as amended), 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:

Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and	**Yes** The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: • The development maintains generally the same building footprint, massing and bulk of the previously approved development with no increase to the maximum building height or floor space ratio. • The modification are minor changes, which does not alter the overall building envelope and therefore the impact on the adjoining properties remains unaltered. • The proposed modification does not change the approved use of the development.
(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	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 DA436/2008 for the following reasons: The modifications do not generate any additional floor area and retains the development footprint of the building. The number of units and floor area of the

Section 4.55(1A) - Other Modifications	Comments
	building remains unchanged and the visual appearance of the building remains consistent with that already approved.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development 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 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	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	None applicable.

Section 4.15 'Matters for Consideration'	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A 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. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an updated geotechnical report. This information was provided to the satisfaction of Council. Clause 92 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. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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	(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. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic

Section 4.15 'Matters for Consideration'	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/05/2022 to 24/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Noel John Purcell	1 / 1 - 3 The Crescent MANLY NSW 2095
Mrs Julia Frances Harris	19 / 7 The Crescent MANLY NSW 2095
Mrs Anne Veronica Ardagh	1/7 Commonwealth Parade MANLY NSW 2095
Ms Boronia Clair Foley	3/1 Commonwealth Parade MANLY NSW 2095

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

- *The development and associated excavation for the carpark has potential to impact the structure stability of 7 Commonwealth Parade. The submission received has requested additional conditions to be imposed in relation to the stability of the development.*
  Comment:
  The modification does change the approved the approved basement level, the basement walls remain in the same position as originally approved and therefore, it is considered that there is no additional impact via excavation as a result of the modification.

  The previous geotechnical reports submitted as part of the original Development Application and subsequent modification applications which deals with the structural support of adjoining sites have been included as conditions of consent. As the proposed modification is not altering the basement level, a revise Geotechnical report was not submitted and therefore no additional

conditions can be imposed in this regard.

- **Building Height and View Impact**

Comment:
The concerns relating to additional building height and the impact on views have been address

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below. *Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.*
Landscape Officer	The application is for modification to development consent DA0436/2008 for demolition and construction of residential flat building for three apartments plus parking. The proposed modifications include: reduced basement excavation; raising the basement level and vehicle entry level; raising the ground floor level to provide level pedestrian accessibility; and other design improvements. The modification application provides additional open space area, terrace planters remain essentially the same, and there is no reduction in deep soil area. Landscape Referral raise no objections to the modifications are indicated by the modification plans.
NECC (Coast and Catchments)	The modification application has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against requirements of the Manly LEP 2013 and DCP 2013. The subject site has not been identified as being within the coastal zone and therefore Coastal Management Act 2016 and State Environmental Planning Policy (Coastal Management) 2018 are not applicable to the proposed development. **Manly LEP 2013 and Manly DCP** **Foreshores Scenic Protection Area Management**

Internal Referral Body	Comments
	The subject site is shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment, the modification DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.
NECC (Development Engineering)	The application proposed to reduce the excavation of the basement. Development Engineering has no objection to the application.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject property adjoins two heritage items: **'Hilder Lea' Residential Flat Building** - 7 Commonwealth Parade **I2 Stone Kerb** - Along the western side of Commonwealth Parade Details of heritage items affected Details of the item as contained within the Manly heritage inventory are as follows: **Hilder Lea** <u>Statement of significance:</u> The Hilder Lea block of flats is of significance for the local area for historical and aesthetic reasons, and as a representative example of early "Chicagoesque" style architecture applied to residential flats. The building is one of the earliest high rise apartment buildings built in the Manly district and in the Sydney area. The building has local landmark qualities and makes a major contribution to the townscape of Manly. <u>Physical description:</u> A seven storey rendered flat building with elaborate parapet. The southern façade is an example of an advanced architectural style in an American inspired idiom, though executed on a tight budget for investment. The building which dominates its immediate surroundings is a familiar landmark in the Manly Cove area. **Stone Kerbs** <u>Statement of significance:</u> Stone kerbs are heritage listed <u>Physical description:</u>

Internal Referral Body	Comments
	Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.
	Other relevant heritage listings
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 — No
	Australian Heritage Register — No
	NSW State Heritage Register — No
	National Trust of Aust (NSW) Register — No
	RAIA Register of 20th Century Buildings of Significance — Yes — Hilder Lea is on the register
	Other
	Consideration of Application
	The proposal seeks consent for modifications to an approved residential flat building. This includes reducing the amount of excavation in the rear of the site as well as raising the basement level and subsequent higher levels. Changes to landscaping, car parking and the general building appearance are also included. Heritage notes that the changes are primarily brought about though reducing the amount of excavation and subsequent impacts to Hilder Lea. Based on reducing excavation impacts to the adjoining heritage item, Heritage can support this modification. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of MLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
	Further Comments
	COMPLETED BY: Brendan Gavin, Principal Planner DATE: 12 October 2021
Strategic and Place Planning (Urban	The applicant has provided additional drawings in support of their application. Urban Design raise no objections subject to conditions as recommended.

Internal Referral Body	Comments
Design)	**Please note**: Regarding any view impacts, any impacts on solar amenity, and overshadowing, these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officer.

Traffic Engineer	**Proposal description:** S4.55 Modifications to Consent No. Mod2020/0139 - DA436/2008 for Demolition and construction of residential flat building for three (3) apartments plus parking
	
	There have been a number of approved modifications, including Mod2018/0575 and Mod 2020/0139, to the proposed development.
	
	One of the concerns raised by the traffic team in their review of Mod2020/0139 (Council Ref. 2020/307131 dated 25/05/2020) was about access arrangements. The initial DA conditions required the construction of a central median island extension along Commonwealth Parade to prevent right turn movements into and out of the site. The developer's analysis & design found that it was not feasible to build the median island without impacting upon parking on the east side of Commonwealth Parade (2 parking spaces may be lost) or without large vehicles encroaching on the median island. The developer therefore proposed to control access by using 'Left Turn Only' and 'No Right Turn' signs. However, Council's Traffic Engineer rejected this proposal advising that a median island should be constructed to prevent right turn movements into and out of the site. The conditions placed on the modification consent outlined that a median island of a reduced length or that was partly/fully mountable by large vehicles could be considered.
	
	The proposed S4.55 Application involves a number of modifications, including:
	
	• adjustment of the access ramp and driveway
	• reconfiguration of the core
	• reconfiguration of the roof, external appearance and internal layouts
	
	The proposed modified development comprises:
	
	• Total: 3 apartments
	  o 2 x Three Bed apartments
	  o 1 x Four Bed apartment

Internal Referral Body	Comments
	• 8 basement car parking spaces The *Traffic and Parking Assessment* prepared by ttpa dated 26 August 2021 and the plans designed by platform Architects dated 09 September 2021 have been reviewed by the Traffic team. **<u>Parking requirement</u>** • *Manly DCP* applies to the subject site. According to the DCP, in LEP Residential Zones, parking rate is as follows: o 1 resident parking space for each dwelling (irrespective of number of bedrooms), plus o 0.2 resident parking spaces for each 2 bedroom dwelling, plus o 0.5 resident parking space for each 3 (or more) bedroom dwelling, and plus o 0.25 visitor parking space for each dwelling (irrespective of number of bedrooms). o The calculation of resident parking and visitors parking are to be individually rounded up to the next whole number Application of the above rates to the proposed development would result in five (5) residential parking spaces and one (1) visitor parking *space.* • On-site parking is provided for a total of eight (8) cars which exceeds the DCP off-street minimum parking requirements by 2 spaces. The swept path for vehicles exiting from the visitor carparking space indicate that the vehicle impacts with the roller shutter some adjustment to the location of the visitor parking space is required the ensure the parking layout is acceptable • All residential parking spaces dimensions and layout appear to be compliant with Australian Standard AS2890.1:2004 Off-Street Parking requirements. • storage areas are available for each unit which could accommodate bicycles. **<u>Property Access</u>**

Internal Referral Body	Comments
	• The conditions of consent require submission of plans for a median island to physically prevent right turns to and from the development. The plans do not incorporate this option and no discussion has been provided outlining why a revised option for a median as proposed previously be Council has not been progressed . • According to the *TfNSW Guide to Traffic Generating Developments* section 6.2, direct access across the boundary with a major road is to be avoided wherever possible. It is noted that sight lines to and from the proposed driveway are limited and that Commonwealth Parade carries high volumes of traffic in both directions. The site also has frontages to both a local street (The Crescent) and a Regional Road (Commonwealth Parade). Therefore, the access driveway location would be more safely accommodated from The Crescent. The development has however been approved with access to and from Commonwealth Parade but this is dependent upon the developer constructing a median island to physically prevent right turns to and from the driveway. The alternative proposed by the developer involving signage only is unacceptable as it does not physically prevent right turns and it considered likely to result in residents seeking to enter and exit the driveway via a right turn which, in this location, is considered undesirable and unsafe. Enforcement of turn bans to a private development is unlikely to be a priority for Police enforcement and a concrete median to physically prevent right turns is considered a superior and more desirable solution. A median of a reduced width, or with a reduced length or which is mountable by larger vehicles at its edges should be considered. If the developer is unwilling or unable to provide a median island to physically prevent right turns the alternate option of redesigning the development so that access is obtained from The Crescent is also suggested. **Traffic Impact** The proposal will generate minimal traffic during the peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance. **Conclusion** In view of the above the proposed modification is supported subject to the same conditions that applied to the approval for Mod2020/0139 - DA436/2008.
Waste Officer	The proposed modifications include the relocation of the waste and recycle bins storage area. The new location is at the front of the building and accessible to Council's waste collection staff. This will allow Council to provide a "wheel out/wheel in service" for the bins. Additional conditions of consent have been imposed for the ongoing access by Council waste collection to enter the property to retrieve and replace the bins.

Internal Referral Body	Comments
	These conditions are legal requirements only and do not include any physical changes to the building.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

An amended BASIX certificate has been submitted with the application (see Certificate No. 315056M_09, dated 5 May 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	30	30

A condition has been included in the recommendation of this report requiring compliance with the

commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	11m	10.77m	Unaltered	Nil	N/A
Floor Space Ratio	FSR: 0.75:1	FSR: 1.36:1 (624.7m²)	Unaltered	Nil	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Clause	Compliance with Requirements
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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 460sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings per 150sqm site are	3 dwellings	3 dwellings	Unchanged
4.1.2.1 Wall Height	North: 10.5m	10.1m	altered	unchanged
	South: 10.5m	10.3m	No change	unchanged
4.1.2.2 Number of Storeys	3	3	3	Unchanged
4.1.2.3 Roof Height	Height: 2.5m	0.6m	unaltered	unchanged
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m to basement 180mm to ground floor balcony 2.48m to first floor balcony 3.5m to second floor 4.5m to third floor	No change No change No change No change No change	Unchanged Unchanged unchanged Unchanged Unchanged
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 0.9 - 3.5m (varies based on wall heights) North: 1m - 3.5m (varies based on wall heights)	0.2m - 3m 0.2m - 3.5m	No Change	Unchanged
	Windows: 3m	1.3m	1.3m	Unchanged
4.1.4.4 Rear Setbacks	8m	7.3m to basement 7.2m to ground 0m to first floor and landcaping 5.8m-7.5m to	7.3m to basement 7.2m to ground 0m to first floor and landcaping 5.8m-7.5m to	Unchanged

		second floor 12.7m to third floor	second floor 12.7m to third floor	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (230sqm)	66.7% 305sqm	66.7% 305sqm	Yes
	Open space above ground 40% of total open space	57% (175sqm)	57% 175sqm	Unchanged
4.1.5.2 Landscaped Area	Landscaped area 30% of open space	20% (60sqm)	21% (64.7sqm)	No - However minor increase
4.1.5.3 Private Open Space	12sqm per dwelling	60sqm per dwelling average	22sqm - 65sqm	Yes
Schedule 3 Parking and Access	6 spaces (Including 1 visitor space)	8 spaces (including visitor space)	8 spaces, plus 1 visitor space	Yes

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
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.5 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
3.5.7 Building Construction and Design	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

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

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 inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

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. Mod2021/0733 for Modification of Development Consent DA 436/2008 granted for alterations and additions to a residential flat building on land at Lot CP SP 11874,5 Commonwealth Parade, MANLY, subject to the conditions printed below:

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

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A1.01 Basement Plan (Revision C)	2022.04.20	platform architects
A1.01 Ground Floor Plan (Revision C)	22022.04.20	platform architects
A1.02 Level 1 Plan (Revision C)	2022.04.20	platform architects
A1.03 Level 2 Plan (Revision C)	2022.04.20	platform architects
A1.04 Level 3 Plan (Revision C)	2022.04.20	platform architects
A1.05 Roof Plan (Revision C)	2022.04.20	platform architects
A2.01 East Elevation (Revision C)	2022.04.20	platform architects
A2.02 North Elevation (Revision C)	2022.04.20	platform architects
A2.03 West Elevation (Revision C)	2022.04.20	platform architects
A2.04 South Elevation (Revision C)	2022.04.20	platform architects
A3.01 Section AA (Revision C)	2022.04.20	platform architects
A3.02 Section BB (Revision C)	2022.04.20	platform architects
A6.1 Widow Schedule	2022.04.20	platform architects

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:

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Lashta Haidari, Principal Planner

The application is determined on 25/05/2022, under the delegated authority of:

Rodney Piggott, Manager Development Assessments