



LogicPlan Services

Development Application Statement of Environmental Effects

Section 4.55 Modification

39 Pittwater Road, Manly

1. INTRODUCTION

This Planning Statement has been prepared by LogicPlan Services on behalf of High Design. It is submitted to Northern Beaches Council in support of a modification application made under Section 4.55 (formerly Section 96) of the Environmental Planning & Assessment Act 1979. This modification seeks consent for modification to the approved DA – 2019/0659 at 39 Pittwater Road, Manly. The approved development consent relates to the alterations and additions to an attached dwelling.

The purpose of this report is to describe the proposed amendments, review the applicable planning regime relating to the proposal, assess the degree of compliance and examine the environmental effects of the development when measured against the relevant requirements of the Environmental Planning and Assessment Act, 1979.

A detailed description of the proposal is provided under Section 3. The statutory planning policy framework is identified at Section 4 and a statutory assessment against the relevant planning controls is provided at Section 5.

Further information on the proposed amendments are provided in Section 3 of this report. The application has been prepared after taking into account the following key issues:

- Legislative requirements relating to the modification of a consent;
- Compliance with environmental planning instruments;
- Likely impacts of the development as amended;
- Suitability of the site; and
- The public interest.

It is considered that the proposed modifications result in substantially the same development and do not result in adverse environmental impacts materially over and above that which was originally approved under delegation on 3 July, 2020.

2. SITE DESCRIPTION

2.1 The Site

The site is a single lot located on the western side of Pittwater Road. The site presents a narrow width comprising of an overall site area of 98.8m². The site forms one of eight adjoining terrace houses while the topography of the land is relatively level. Existing on the site is a one and two storey brick, render and clad residence with metal roof. **Figure 1** below provides an aerial indication of the location of the subject site within its defining context.

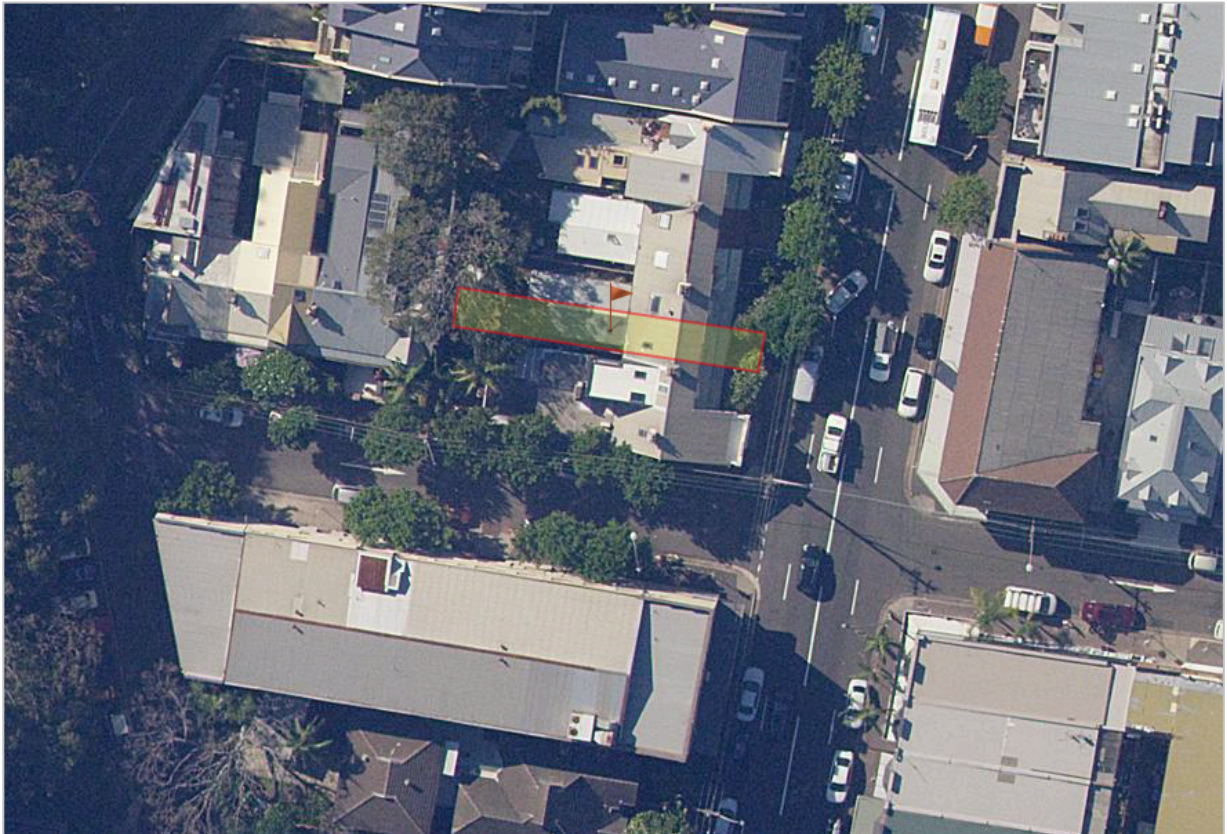


Figure 1: Aerial view of the site
Source: Six Maps

Subject site 

2.2 Surrounding Context

The immediate area predominately comprises of a mixture of single detached/attached dwellings of varying scales, forms and architectural themes interspersed by both commercial and retail development.

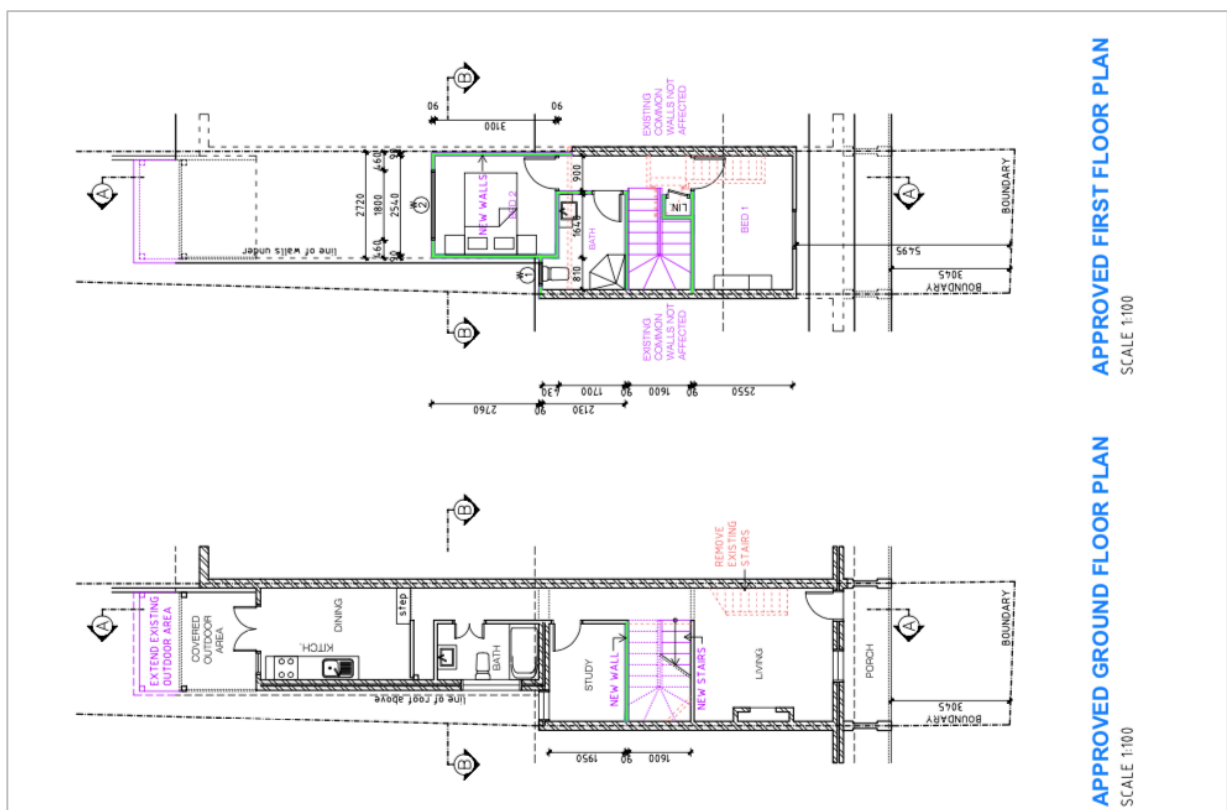
3. PROPOSED MODIFICATIONS

3.1 Planning History and Consent to be modified

Development Application – 39 Pittwater Road, Manly, involving the alterations and additions to the existing attached dwelling was approved by way of delegated authority on 3 July 2020.

3.2 Proposed Modifications

This application seeks approval for modification to the development as demonstrated in the architectural plan details prepared by High Design accompanying this application. A floor plan comparison identifying the approved floor plans (DA 2019/0659), compared to those proposed as part of this Section 4.55 modification are reproduced below for reference.



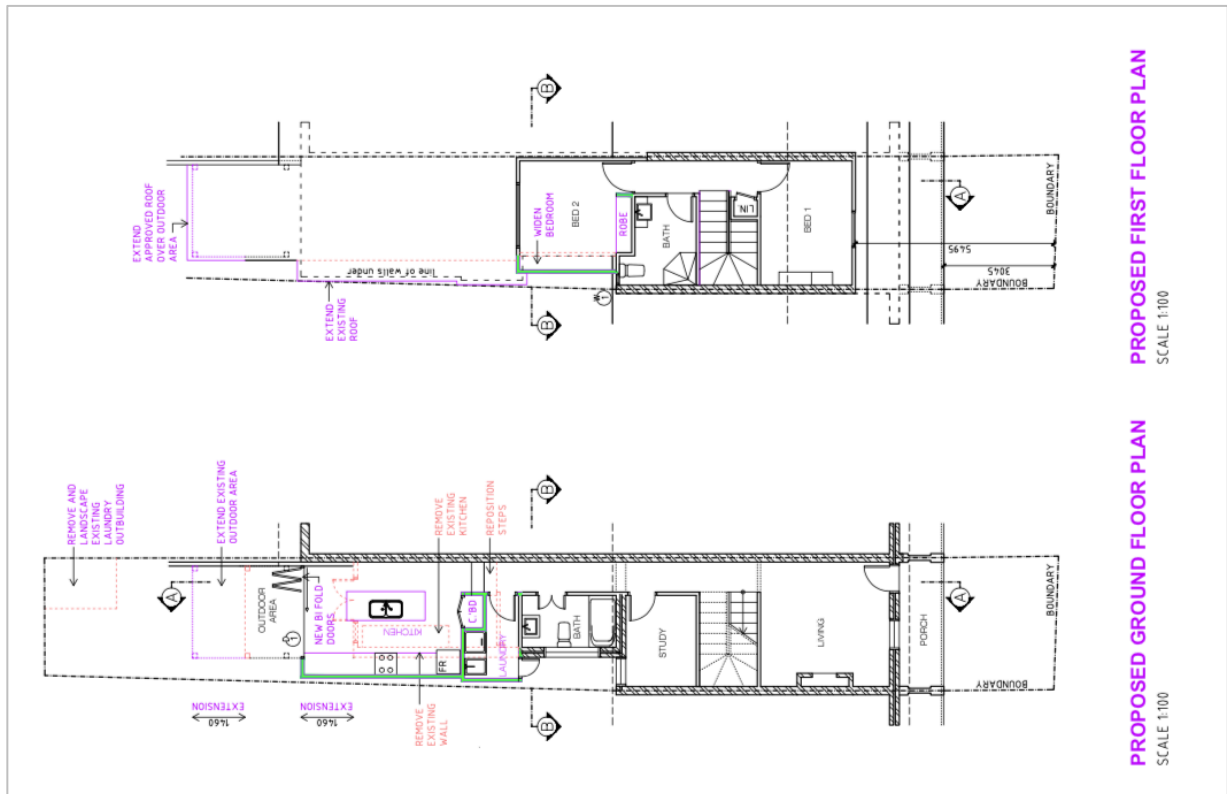


Figure 3: Proposed ground and first floors
Source: High Design

As most clearly identified upon review of the architectural plan detail excerpts provided above, the proposed modifications are for the purpose of improving the approved floor plan functionality and configuration enabled by the slightly enlarged kitchen/dining spaces, inclusion of an appropriately sited internal laundry, extension of the outdoor area that is utilised as an extension to the living space and the slight enlargement of the upper floor bedroom area.

4. SECTION 4.55 ASSESSMENT

4.1 Section 4.55 of the EP&A Act 1979 – Other Modifications

Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 (the Act) addresses modifications and provides that Council may modify a consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
 - (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 that requires the notification or advertising of applications for modification of a development consent, and*
 - (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*
- Subsections (1) and (1A) do not apply to such a modification.*
- (3) In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*
 - (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*
 - (5) (Repealed)*

In response to the above criteria it is noted that:

- The development proposes the same land use as approved by Northern Beaches Council under (DA 2019/0659) on 3 July, 2020;
- The general form of the development remains the same in so far as it comprises of an attached dwelling;
- The Section 4.55(2) modification allows for amendments to the development to be considered where such amendments do not have a determinative impact on the acceptability of the proposal;
- The proposed modifications would not result in any adverse visual and or amenity impacts, as demonstrated at Section 5 below;
- The consent, if modified as proposed, would result in substantially the same development as that which is presently approved; and,
- Notification of this application is a matter for Council. Should Council notify the application and receive any submissions we request the opportunity to provide a response to any issues raised, prior to the application being determined.

Further detail is provided having regard to the requirements of 4.55 (2) (a) below:

a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all,

Pearlman C.J. in *Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor* (1999) NSWLEC 251 held “substantially the same development” to mean “essentially or materially or having the same essence”. We note that the development, as modified would essentially and materially have the same essence being an ‘**attached dwelling**’.

In addition, it is noted that during the proceedings of *Tipalea Watson Pty Ltd v Ku-ring-gai Council* (NSWLEC 253) 2003 “substantially the same development” had the meaning of “essential characteristics” of the approved development. In addition, during the Court proceedings of *Moto Projects (No. 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298, Bignold, J held that: -

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (current) approved development.”

The proposed amendments will ‘**not**’ result in any of the following: -

- Significant change to the nature or intensity of the use;
- Significant change to the relationship to adjoining properties;
- Adverse impact on neighbours from the changes (overshadowing; visual and acoustic privacy; traffic generation, etc);
- Significant change to streetscape; and
- Change to the scale or character of the development.

In our opinion, therefore, the proposed modifications do not change the essential features of the approved development and do not substantially and or unreasonably alter the approved built form or use of the site.

Overall, the resulting built form as approved under (DA 2019/0659) will remain visually identifiable with that approved and envisaged for the land. Other matters such as the setbacks, general layout and access are not inconsistent with the approved design.

Quantitative impact

The modified built form does not adversely impact on the external presentation of the approved development, most notably, as it is interpreted from the public domain along Pittwater Road. The placement of additional floor space is strategically sited so as to not give rise to any perceivable increase to the volume of the development in a manner that could be interpreted as being a contribution to bulk.

Accordingly, it is considered that the modification results in substantially the same development as approved under Development Consent No. (DA 2019/0659) by Northern Beaches Council on 3 July, 2020.

b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and,

We understand that there are no conditions imposed on the consent by a relevant Minister, public authority or approval body and hence consultation is not required.

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 that requires the notification or advertising of applications for modification of a development consent, and**

Notification of the application is a matter for Council.

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.

Should Council notify the application and receive any submissions, we request the opportunity to provide a response to any issues raised, prior to the application being determined.

4.2 Matters for Consideration

Section 4.53(3) of the Act requires that in determining an application for modification of a consent, Council must take into consideration such of the matters referred to in Section 4.15 (1) of the Act as are of relevance to the development the subject of the application.

Section 4.15(1) identifies the matters to be considered by Council when assessing a development application, being:

- (a) the provisions of:*
 - (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan, and*
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) (Repealed)*
- that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

These issues are considered in Section 5 below

5. SECTION 4.15 ASSESSMENT

5.1 Statutory and Policy Controls

The statutory and policy controls relevant to the proposed development include:

- State Environmental Planning Policy No. 55 - Remediation of Land;
- State Environmental Planning Policy (BASIX) 2004;
- State Environmental Planning policy (Infrastructure) 2007
- State Environmental Planning Policy (Vegetation in Non-Rural Areas);
- Manly Local Environmental Plan 2013;
- Manly Development Control Plan 2013.

An assessment of the proposal against the relevant provisions of the above statutory and policy controls is provided in the following sections.

5.2 State Environmental Planning Policy No.55 – Remediation of Land

The requirement at Clause 7 of SEPP 55 for the consent authority to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development was considered as part of the assessment of the original application. In this regard, the proposed modifications do not raise any new concerns regarding site contamination.

5.3 State Environmental Planning Policy (BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 commenced on 1 July 2004. The proposed development continues to satisfy the relevant Basix provisions.

5.4 State Environmental Planning Policy (Vegetation in Non Rural Areas)

The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.

The Vegetation SEPP applies to clearing of:

1. Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the *Local Land Services Amendment Act 2016*; and
2. Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).

The Vegetation SEPP repeals clause 5.9 and 5.9AA of the *Standard Instrument - Principal Local Environmental Plan* with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable DCP.

The proposed modifications do not result in the removal of any additional trees or vegetation. In this regard, the modifications will have no bearing on the ability for the provisions of this SEPP to remain satisfied.

5.5 State Environmental Planning Policy (Infrastructure) 2007

This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—

- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- (b) development carried out—
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
 - (ii) immediately adjacent to an electricity substation, or
 - (iii) within 5m of an exposed overhead electricity power line,

From our understanding, the approved development was referred to Ausgrid for comment and no response was received. Given that the proposed modifications are located along the rear of the development, there is no aspect of the proposed works which would trigger a re-evaluation by Ausgrid.

5.6 Manly Local Environmental Plan 2013

The Manly Local Environmental Plan 2013 (MLEP 2013) applies to the subject site which is identified as being within Zone B2- Local Centre. Although development for the purposes of attached dwellings are prohibited in the zone, the subject site benefits from existing use rights whereby the proposed works are permissible subject to the consent of Council. Furthermore, in their assessment of the original development application, Council concluded that sufficient evidence was provided to prove the existence and use of the existing building in such a manner, whereby an existing use was deemed active and the attached dwelling on the land being lawful.

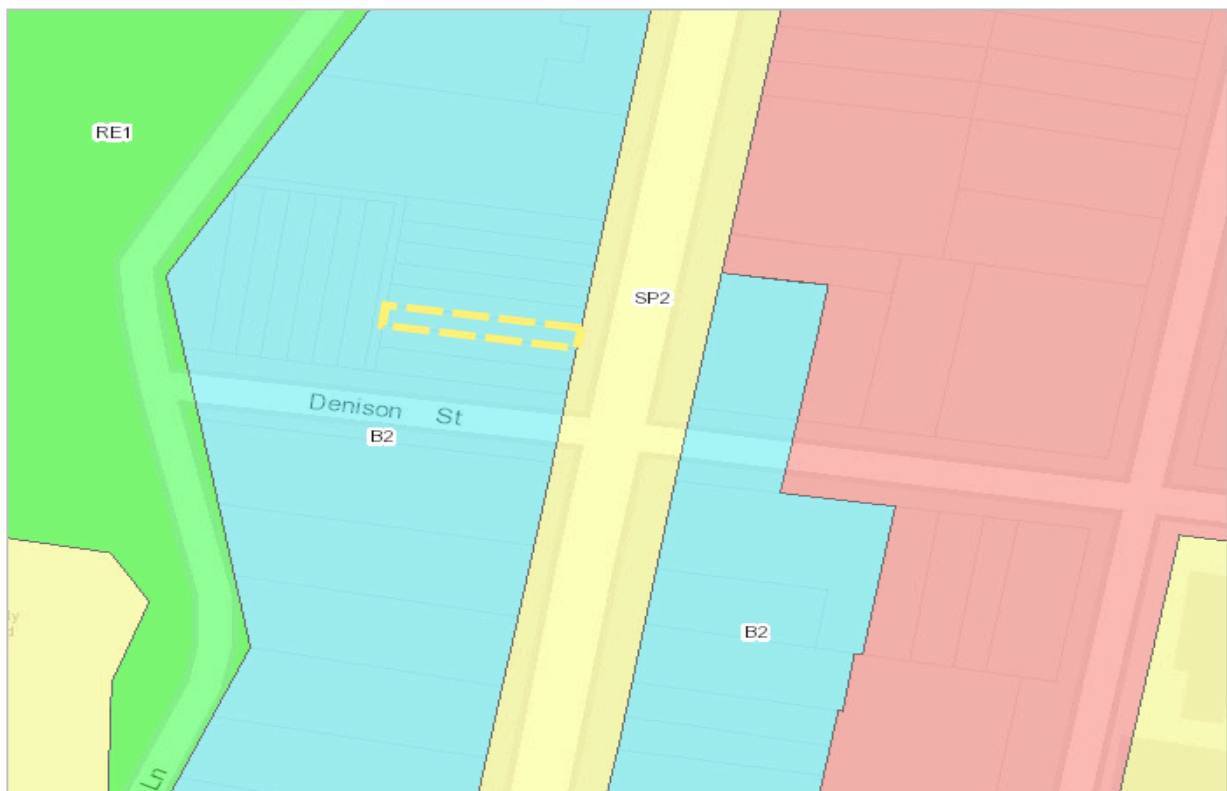


Figure 4: Land Zoning Map
Source: MLEP 2013

The objectives of the B2 Zone are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.

The proposed modifications will not adversely compromise on the ability for the development (**as modified**) to remain consistent, where applicable, with the objectives for the zone.

CLAUSE 4.3 HEIGHT OF BUILDINGS

1. The objectives of this clause are as follows:

- *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- *to minimise any overshadowing of neighbouring properties,*
- *to allow for the reasonable sharing of views,*
- *to encourage buildings that are designed to respond sensitively to the natural topography,*
- *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Controls

The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map which in this case is 15m.

Response

The proposed modifications result in a slight parapet height increase along the rear of the dwelling. However, this parapet remains notably below the pronounced and existing ridge of the dwelling which remains well below the 15m height limit prescribed to the land.

CLAUSE 4.4 FLOOR SPACE RATIO

The objectives of this clause are as follows:

- *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

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

Controls

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map which in this case is 2:1.

Response

The proposal seeks an 8.5m⁵ increase to the calculable floor area. This equates to a proposed gross floor area of 72m² generating a floor space ratio of 0.728:1 complying with this standard.

CLAUSE 5.10 HERITAGE CONSERVATION

The objectives of this clause are as follows:

- *to conserve the environmental heritage of Manly,*
- *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- *to conserve archaeological sites,*
- *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The subject site is one of eight intact Federation Terrace Houses aesthetically significant as a coherent group framed at either end by projecting shop terraces set to the alignment of the road. They are listed as a group heritage item in Schedule 5 of Manly LEP 2013.

Accompanying the original development application submitted with and approved by Council, was a Statement of Heritage Impact prepared by Colin Israel. This report concluded the following:

“Additions are proposed to No. 39 comprising mainly to the rear of the existing first floor attic and include a new bathroom and bedroom with access via a new stair. The additions do not alter the existing main roof form or façade as viewed from Pittwater Road. The proposal is similar in form, character and materials to the recent additions carried out to No 37 and would form a consistent pair within the group of Terraces.

These proposed additions to No. 39 Pittwater Road Manly are sympathetic to the heritage character of the historic terrace row and retain its original detailing and presentation to the street. The Roof Attic extensions are sympathetic, closely following the example and detail of the successful modifications to No 37 and compatible with other terraces in the row. The additions involve minimal loss of original fabric and would provide a favourable outcome in heritage terms as well as providing an enhanced level of accommodation for the occupants.

Council's Heritage Officer in their assessment of the original proposal concluded the following:

“The proposed works are mainly at the rear and are not visible from Pittwater Road, therefore, there will be minimal impact upon the heritage item and conservation area”

Given the proposed modifications remain at the rear of the dwelling whereby visually obscured from Pittwater Road, it can be assumed that no additional impacts are envisaged to result on heritage grounds. In this regard, a supplementary report from Colin Israel is not warranted in the circumstance of this case.

In this regard, the proposed modifications continue to satisfy the relevant provisions of Clause 5.10 of MLEP 2013.

CLAUSE 6.1 ACID SULFATE SOILS

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Controls

Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

Class of land	Works
1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the *Acid Sulfate Soils Manual* and has been provided to the consent authority.

(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if:

- (a) a preliminary assessment of the proposed works prepared in accordance with the *Acid Sulfate Soils Manual* indicates that an acid sulfate soils management plan is not required for the works, and
- (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.
- (5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power):
 - (a) emergency work, being the repair or replacement of the works of the public authority required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,
 - (b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),
 - (c) minor work, being work that costs less than \$20,000 (other than drainage work).

(6) Despite subclause (2), development consent is not required under this clause to carry out any works if:

(a) the works involve the disturbance of less than 1 tonne of soil, such as occurs in carrying out agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial water bodies (including canals, dams and detention basins) or foundations or flood mitigation works, or

(b) the works are not likely to lower the watertable.

Response

The site is located in an area identified as being affected by Class 4 Acid Sulfate Soils. Notwithstanding, the proposal modifications do not necessitate the need for any extensive ground works in which the watertable will be lowered by more than 2m. In this regard, the provision of an Acid Sulfate Soils preliminary assessment is not warranted in the circumstance of this case.

CLAUSE 6.2 - EARTHWORKS

Pursuant to clause 6.2 of the MLEP, earthworks which objectives state:

(a) to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,

(b) to allow earthworks of a minor nature without requiring a separate development consent.

The proposal does not necessitate the need for any extensive excavation works which are limited to that required for the provision of small footings enabling the extension of the existing outdoor area.

Appropriate measures will be put in place to ensure there are no adverse impacts to the environment.

CLAUSE 6.4 STORMWATER MANAGEMENT

Pursuant to clause 6.4 of the MLEP, stormwater management, its objective aims to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters. In this regard, all additional stormwater proposed to be generated by the modifications will be connected to the existing stormwater system in a Council approved manner.

CLAUSE 6.11 ACTIVE STREET FRONTAGES

Pursuant to clause 6.11 of the MLEP, the site is identified on the Active street frontages Map. The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B2 Local Centre. In this instance, the heritage significance of the subject and directly adjoining dwellings precludes the ability for the achievement of this outcome.

CLAUSE 6.12 ESSENTIAL SERVICES

Pursuant to clause 6.12 development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.*

All essential services are available on the site.

CLAUSE 6.16 Gross Floor Area in Zone B2

The proposed development involves the alterations and additions to an existing attached dwelling, which benefits from existing use rights, and does not include retail premises. The requirements of this clause are not applicable to this development.

5.6 Manly Development Control Plan 2013

The proposed modifications do not alter the compatible streetscape alignment established by the approved development. The minor modifications by virtue of their siting and scale will not be perceived as inappropriate or jarring in a streetscape context. The resulting scale of the modifications remain compatible with the unity and form observed by the remaining group of terraces the dwelling is located amongst.

With regards to landscaping, the proposed removal of the existing laundry and outbuilding and its replacement with landscaping, will assist in water infiltration and reduction in the overall extent of built form elements observed across the land.

The revised shadow diagrams prepared by High design accompanying this application demonstrate that the extent of additional shadow likely to be cast by the modified building volume is not unreasonable. Furthermore, no adverse privacy and or acoustic impacts will result. Reciprocal privacy outcomes will be maintained between this and neighbouring dwellings.

In terms of setbacks, while the modifications do propose to alter the approved side setback line, this outcome will bring the development into more unity with the underlying intent of the objectives and controls which aims to site buildings along site boundaries. Notwithstanding, the proposed side setbacks remain commensurate with the established building lines observed by the established group of buildings the subject dwelling is located amongst.

5.7 The provisions of any exhibited Draft Environmental Planning Instruments

5.7.1 The Draft Environment SEPP

The planning provisions for waterways, catchments, world heritage and urban bushland are currently contained in seven State Environmental Planning Policies (SEPPs), the Standard Instrument – Principal Local Environmental Plan (Standard Instrument), and in Ministerial Directions for plan making issued under the Environmental Planning and Assessment Act 1979.

An Explanation of Intended Effect for the SEPP (Environment) was publicly notified between 31 October 2017 to 31 January 2018. The SEPP (Environment) will integrate provisions from seven existing SEPPs relating to catchments, waterways, urban bushland and world heritage, and to reduce the complexity and streamline the planning system.

The proposed SEPP (Environment) will:

- Encourage the proper management, development and conservation of natural resources and the protection of the environment, in line with the objectives of the Act
- Enable growth that maintains and enhances the health and integrity of our natural and cultural heritage for the benefit and enjoyment of the present community and for future generations
- Streamline development assessment by identifying and considering environmental values and constraints at the earliest possible stage in the development decision making process, using evidenced based planning methods
- Promote ecologically sustainable development that supports a balanced approach to the use of land and natural resources, and provides for long term environmental, economic and social wellbeing
- Adopt a risk based approach to minimise cumulative negative impacts of development on both the immediate site and on a surrounding area or region
- The proposed SEPP fits within a range of plans and strategies including A Plan for Growing Sydney, draft District Plans, Regional Plans, local environmental plans, Ministerial Directions, and development control plans

Having regard to the information of the Explanation of Intended Effect of the SEPP (Environment), it is considered that the proposed modifications are consistent with the draft planning instrument being, the proposed SEPP (Environment).

5.7.2 Draft Remediation of Land SEPP

The Draft Remediation of Land SEPP was on public exhibition until 31 March 2018 and is a review of SEPP No 55 – Remediation of Land which along with the *Managing Contaminated Land Planning Guidelines* has been in place for almost 20 years. Both documents needed to be updated to respond to changes in federal and state legislation and policy, and to reflect new land remediation practices.

The new SEPP aims for the better management of remediation works by aligning the need for development consent with the scale, complexity and risks associated with the proposed works and will:

- *provide a state-wide planning framework for the remediation of land*
- *require consent authorities to consider the potential for land to be contaminated when determining development applications*
- *clearly list the remediation works that require development consent*

- *introduce certification and operational requirements for remediation works that can be undertaken without development consent*

The proposed modifications will in no way conflict with the provisions of this Draft SEPP.

5.8 Environmental Planning and Assessment Regulations 2000

5.8.1 Clause 98 – Compliance with the BCA

Pursuant to the prescribed conditions under Clause 98 of the Regulation, any building work *"must be carried out in accordance with the requirements of the Building Code of Australia"*. In this regard, the proposed modifications will have no adverse bearing on the ability for the works associated with this development (**as modified**) to be carried out in accordance with the relevant provisions of the BCA.

5.9 The Likely Impacts of the Development

5.9.1 Built Form

The outward appearance of the modified built form resembles a massing arrangement that is visually congruent with that currently approved. Furthermore, no unreasonable amenity and or visual impacts will result to neighboring developments or the public domain given the appropriately applied fenestration and functional façade arrangements which remain commensurate with that of the approved building.

5.10 The Suitability of the Site for the Development

The suitability of the site for this form of development was established by the Council approved Development consent dated 3 July, 2020 and the subsequent modifications approved by way of delegated authority.

5.11 The Public Interest

The modifications sought will in no way preclude the ability for the development to remain commensurate with the established and emerging character of the of the area. Given that there are no unreasonable impacts that will result from the proposed modifications, the extent of benefit provided for by the modifications will outweigh any disadvantage and as such, the proposed development will have an overall public benefit.

6. CONCLUSION

This application seeks approval for a Section 4.55 modification to the approved development at 39 Pittwater Road, Manly ("**the site**").

A comprehensive assessment of the proposed modifications has been made against all of the applicable environmental planning provisions. The development has been found to be compliant in relation to all relevant planning controls in terms of standards, underlying objectives and merit. Arising from that assessment the amended proposal is considered to be:

- Substantially the same development as that which was originally approved;
- A suitable and desirable use for the site which meets the relevant heads of consideration under Section 4.15 of the Act;
- In accordance with the aims, objectives and provisions of the planning instruments and controls; and,

- An appropriate and acceptable development that will not generate any unreasonable environmental impacts over and above that which was originally approved by way of the Council on 3 July, 2020.

We are satisfied that this proposal has properly responded to all relevant matters for consideration within the Environmental Planning and Assessment Act, and the accompanying Regulation.