

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0149
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 1066457, 36 Gurney Crescent SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Anders Olof Svensson Kirsty Kristine Svensson
Applicant:	Rapid Plans Pty Ltd

Application Lodged:	27/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	05/04/2023 to 19/04/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 44.71%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for the Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage.

The 4.55(2) modification application is referred to the Development Determination Panel (DDP) due the proposed modifications resulting in a variation greater than 10% to the maximum building height control of the Manly Local Environmental Plan 2013. The Development Application was previously considered and determined by way of approval at the DDP on 25 May 2022 due to a variation greater than 10% to the maximum building height control, and a variation greater than 10% to floor space ratio under Manly Local Environmental Plan 2013. There are no increases in gross floor area under this application and

therefore no changes to floor space ratio under this application.

The proposal was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

Critical assessment issues include variation to the height of buildings development standard.

This report concludes with a recommendation that the DDP grant approval to the modification application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification works to DA2021/2626 comprise of the following:

Lower Level Store/Workshop

- No changes proposed;

Basement/Lower Ground Floor

- Remove handrail and extend masonry wall to enclose to column;

Ground Floor

- New window (W17) in approved laundry;
- Retention of existing windows;

First Floor

- Extension of existing awning to match existing;
- Addition of sheet metal to existing vergola with lining and lighting to underside;
- Remove handrail and extend masonry wall to enclose to column in lieu of approved metal screening;
- New vertical metal screening to eastern front elevation;
- Retention of existing windows;
- Widening of approved window (W7) to provide a corner window (W7a); and

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

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

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

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 1066457 , 36 Gurney Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located between the eastern and western sides of Gurney Crescent. The site is irregular in shape with an angular frontage of 8.39m along the western side of Gurney Crescent, 26.16 metres along the eastern side of Gurney Crescent, and a maximum depth of 42.36 metres. The site has a surveyed area of 937.6m². The site is located within the R2 Low Density Residential zone from MLEP 2013 and accommodates a dwelling house, swimming pool and attached garage currently on the site. The site slopes steeply from the eastern front boundary to the western rear boundary over approximately The site contains existing lawn areas, garden beds, rock outcrops, and trees. There are no details of any threatened species on the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by dwelling houses of similar scale varying in architectural style and design.

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:

DA0458/2004

Development Application for Dwelling House and Swimming Pool.
Approved on 15 December 2004.

DA0458/2004/2

Section 96(1A) Modification for Dwelling House and Swimming Pool.
Refused on 14 September 2006.

Land and Environment Court - Kirzner v Manly Council [2007] NSWLEC 78

Section 96 modification/Building Certificate refusal

DA0458/04/2007/BC

Building Certificate for unauthorised works.
Dated 13 April 2007.

DA0143/2008

Development Application for Use of the lower ground level of a 3 storey dwelling as a family flat.
Refused on 3 March 2009.

DA0072/2014

Development Application for Change of use to a secondary dwelling within the existing dwelling house.
Approved on 20 November 2014.

DA2021/2626

Development Application for Alterations and additions to a dwelling house including a garage.
Approved on 25 May 2022 by Development Determination Panel.

ME2022/00041

Minor Encroachments within Road Reserve.
Encroachment Agreement dated 2 December 2022.

CC2022/1341

Construction Certificate for Alterations and additions to a dwelling house including a garage.
Approved on 6 December 2022 by External Certifier.

NOC2022/1309

Notice of Commencement of Building Work & Appointment of Principal Certifier for Alterations and additions to a dwelling house including a garage.
Dated 8 December 2022.

APPLICATION HISTORY

Following the preliminary assessment of the application, A request for information was made in relation to additional information associated with the extent of proposed modification works. A site visit was conducted on Thursday, 20 April 2023, where it was identified that some of the works which form part of the proposed modification application have commenced. As such amended modification plans were requested to include the prospective works only, and any works that have commenced to be removed from the proposed plans. The works that have commenced include the amendment to the windows include windows already installed (W12, W13, W14, W16), the relocation of door (D10) that has been installed, and internal alterations to the first floor that include the new bathrooms in replacement of the study, and store. Subsequently, the applicant provided amended Master Plans detailing prospective works only. Furthermore, an amended BASIX Certificate was provided to include an additional window (W7a) as detailed on the proposed plans. The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

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 DA2021/2626, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2626 for the following reasons: • It is considered the proposed modification works are amendments that are consistent with the consent that was originally granted under DA2021/2626. • The proposed modification works are considered to be minor alterations and additions that do not significantly alter the development, as approved. • As such, the consent authority cannot be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2626.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/2626 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any	See discussion on “Notification & Submissions Received” in this report.

Section 4.55 (2) - Other Modifications	Comments
period prescribed by the regulations or provided by the development control plan, as the case may be.	

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 (2) 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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via an existing condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the proposed modification works. A site visit was conducted on Thursday, 20 April 2023 and it was noted that some of the works on the proposed modification plans have commenced. As such amended modification plans were requested to include the prospective works only, and any works that have commenced to be removed from the proposed plans. The works that have commenced include the amendment to the windows include windows already installed (W12, W13, W14, W16), the relocation of door (D10) that has been installed, and internal alterations to the first floor that include the new bathrooms in replacement of the study, and

Section 4.15 'Matters for Consideration'	Comments
	store. Subsequently, the applicant provided amended Master Plans detailing prospective works only. Furthermore, an amended BASIX Certificate was provided to include an additional window (W7a) as detailed on the proposed plans. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via an existing condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via an existing condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via an existing condition of consent.
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 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the

specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the Development Application that included a certificate (prepared by Bushfire Planning Services Pty Ltd, dated 26 December 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. A Bush Fire Cover Letter was submitted with the Modification Application that included a RFS Pre-DA Advice Summary.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS provided a response on 14 April 2023 and raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent. As such, it is considered that the proposed development has satisfied the matter for considerations required under Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/04/2023 to 19/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, no Conditions required</i> The application is for modification to development consent DA2021/2626. The proposed amendments will not change the landscape outcome approved in DA2021/2626, and as such the original conditions remain. No further conditions are imposed.
NECC (Bushland and Biodiversity)	<i>Supported, no Conditions required</i> The proposal seeks approval for Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage. The comments in this referral relate to the following applicable controls: • Manly LEP Clause 6.5 (Terrestrial Biodiversity). The submitted bushfire report has concluded that no additional vegetation removal will have to take place. There are no objections to the modification from a biodiversity perspective (subject to retention of existing biodiversity conditions).

External Referral Body	Comments
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External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to Conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	<i>Supported, subject to Conditions</i> The proposal was referred to NSW Rural Fire Service who provided a response on 14 April 2023 stating that the proposal is acceptable subject to compliance with the recommended conditions. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<i>Supported, no Conditions required</i> Development Application No. Mod2023/0149 Description: Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage Address: 36 Gurney Crescent SEAFORTH Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A444207_05 dated 11 May 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.3m (Privacy Screen) 12.0m (Outdoor Kitchen Wall) 11.6m (Awning)	12.3m (Masonry Wall) 10.4m (Awning Extension)	44.71% (3.8m) 22.35% (1.9m)	No
Floor Space Ratio	FSR: 0.4:1 (375.04m ²)	FSR: 0.52:1 (486.60m ²)	unaltered	-	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	N/A
4.5 Calculation of floor space ratio and site area	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.3m
Percentage variation to requirement:	44.71% (3.8m)

The proposed variations to the height of buildings development standard are detailed in Figure 1 below:

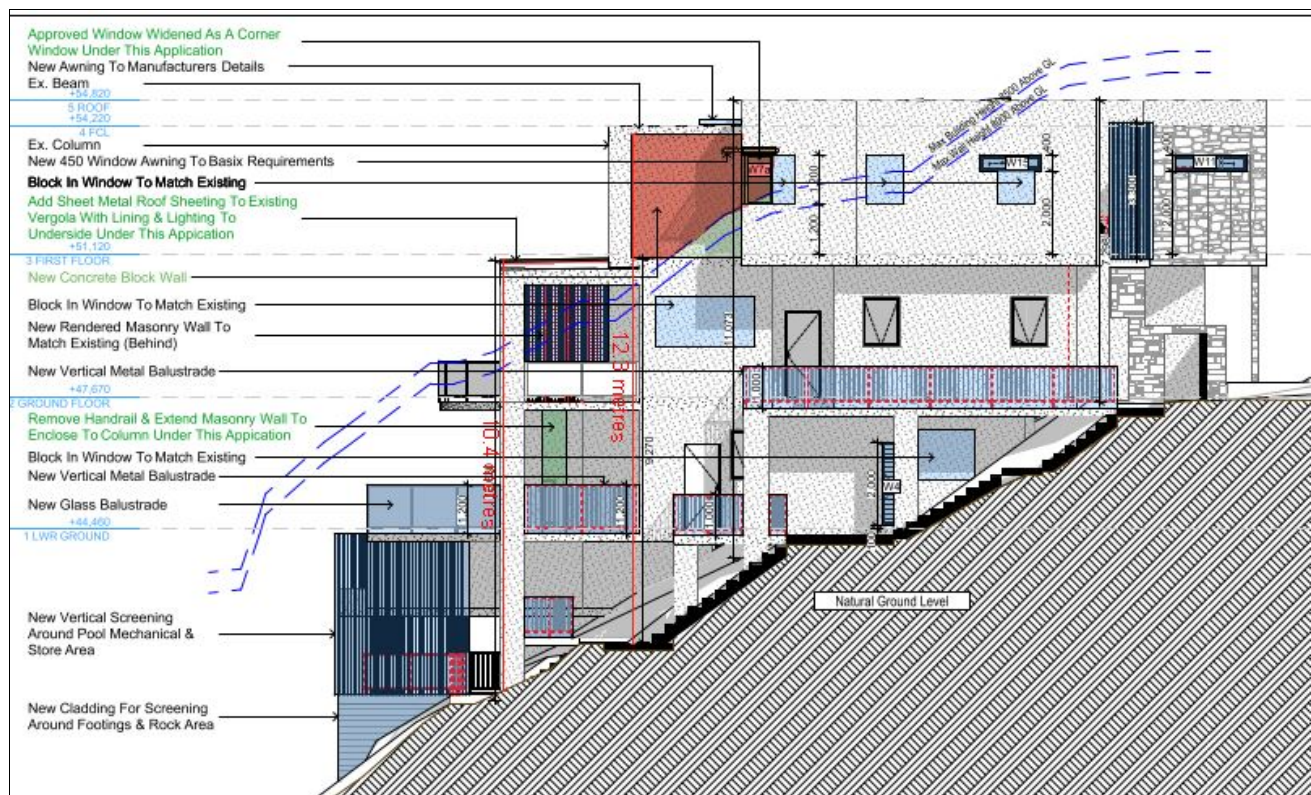


Figure 1. South Elevation (red shading showing height of building non-compliance)

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

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

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

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

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

Comment:

It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The proposal presents variations to the height of buildings development standard as a result of the proposed masonry wall in lieu of the approved vertical metal screening. Furthermore, the proposal presents a variation to the development standard as a result of the extension of the existing awning. It is considered that the elements that breach the building height are located beneath the existing maximum height of the dwelling house, and as such strict compliance is unreasonable or unnecessary.

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

Comment:

It is considered that the subject site obtains constraints as a result of the steep topography. The existing dwelling house has been designed to step down the sloping site, and the proposal presents additional encroachments above the maximum height of buildings. It is important to note, the additional breaches of building height are located beneath the existing maximum height of the dwelling house. It is considered that the existing site topography, and retention of the existing dwelling house restrict the proposal from demonstrating compliance with the maximum height of buildings. Notwithstanding, it is considered that sufficient environmental planning grounds justify the contravention in this circumstance.

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

4.3 Height of buildings

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposal does not alter the maximum building height of the dwelling house, noting that the roof form of the dwelling house is retained. The proposed works are located beneath the maximum ridge line, and therefore the alterations and additions are not visible from the streetscape. The proposal demonstrates consistency with the steep topographic landscape, prevailing building height, and desired future streetscape.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development has been controlled through the retention of the existing side setbacks. The proposal does not result in any changes to the approved floor space ratio, and as such the scale of the dwelling house is retained. The proposal has been well articulated through varied colours and finishes to mitigate any perceived bulk.

c) to minimise disruption to the following—

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),***
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),***
- (iii) views between public spaces (including the harbour and foreshores),***

Comment:

The maximum ridge line of the dwelling house remains unaltered, and as such the proposal is unlikely to disrupt existing views obtained to and from residential development, and public spaces.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

As demonstrated on the shadow diagrams that accompany the modified proposal, sufficient solar access is provided to private open spaces and adequate sunlight has been maintained to private open spaces and habitable rooms of adjacent dwellings.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses,

Comment:

The subject site is not located within a recreation or environmental protection zone and therefore this objective is not relevant.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposal provides for the housing needs of the community within a low density residential environment through the retention of the dwelling house.

It is considered that the development satisfies this objective.

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

Comment:

The proposal retains the residential use of the site to meet the day to day needs of the residents.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Comment:

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

Mainly Development Control Plan**Built Form Controls**

Built Form Controls - Site Area: 937.6m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 8.0m (based on gradient 1:4+)	Lower Ground: 8.6m Ground: 12.1m First: 11.1m to 12.3m	unaltered	N/A
	S: 8.0m (based on gradient 1:4+)	Lower Ground: 6.6m Ground: 7.9m First: 11.1 to 12.3m	unaltered	N/A
4.1.2.2 Number of Storeys	2	3 (unaltered)	unaltered	N/A
4.1.2.3 Roof Height	Height: 2.5m	unaltered	unaltered	N/A
	Pitch: maximum 35 degrees	unaltered	unaltered	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	unaltered	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North Lower Ground: 2.87m (based on 1/3 wall height) Ground: 4.03m (based on 1/3 wall height) First: 4.1m (based on 1/3 wall height)	Lower Ground: 2.0m (unaltered) Ground: 2.0m (unaltered) First: 2.0m (unaltered)	unaltered	N/A
	South Lower Ground: 2.2m (based on 1/3 wall height) Ground: 2.63m (based on 1/3 wall height) First: 4.1m (based on 1/3 wall height)	Lower Ground: 2.0m (unaltered) Ground: 2.0m (unaltered) First: 1.0m (unaltered)	unaltered	N/A
	Windows: 3m	1.6m	0.9m	No
4.1.4.4 Rear Setbacks	8m	11.5m	unaltered	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% of site area (562.56m ²)	77.99% (731.30m ²)	unaltered	Yes
	Open space above ground 25% of total open space (182.83m ²)	37.40% (273.50m ²)	unaltered	N/A
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	57.30% (419.04m ²)	unaltered	Yes

		(unaltered)		
	4 native trees	5 trees	unaltered	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	unaltered	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	8.7m (unaltered)	unaltered	N/A
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	unaltered	unaltered	N/A
	1m curtilage/1.5m water side/rear setback	unaltered	unaltered	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	3 spaces (unaltered)	unaltered	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
3.4 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
3.5.5 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
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	N/A	N/A
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

The varied wall heights approved under DA2021/2626 remain unaltered under this modification application.

Therefore, the outcomes of the original consent are retained under this modification application and a detailed merit assessment is not required in this instance.

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

Description of non-compliance

The proposal presents a new window (W7A) to provide a corner window on the first floor along the southern elevation. The proposed window is located 0.9 metres from the southern side boundary, presenting a variation of 70% (2.1 metres) to the required 3.0 metres.

The proposed new window is replacing an existing window in a similar location, and as such is not likely to result in any unacceptable amenity impacts. It is noted that the new window is smaller than the existing window.

Notwithstanding, an assessment has been undertaken against the objectives of the control, and it is considered that the proposed variation is supportable in this instance.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed window is located along the southern elevation, and as such will not impact upon the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

- ***providing privacy;***
- ***providing equitable access to light, sunshine and air movement; and***
- ***facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.***
- ***defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and***
- ***facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.***

Comment:

The proposed window will provide acceptable privacy, access to light, sunshine, and air movement. It is important to note, that the new window is smaller in size than the existing window, and as such will provide acceptable local amenity to the residents, and adjoining residents. The proposed window will not impact upon existing view sharing, and will provide adequate space between buildings, noting the side setback is unaltered. The proposal will not alter the character of the streetscape, and is not viewable from the street. Lastly, there are no changes to the existing traffic conditions as a result of the proposed development.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

Flexibility is afforded in this circumstance as the window setback variation will not result in unreasonably amenity impacts to the adjoining sites.

Objective 4) To enhance and maintain natural features by:

- ***accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;***
- ***ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and***
- ***ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.***

Comment:

The proposal does not alter the existing landscaping on the subject site and subsequently does not result in the removal of existing vegetation or trees. The proposed development does not detract from the context of the site and the site does not adjoin open space lands, national parks, or urban bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

A Bushfire Report was submitted with the application (prepared by Bush Fire Planning Services, dated 6 December 2022). The proposed was referred to NSW Rural Fire Service who provided support of the application, subject to recommendations, and recommended conditions. The recommendations of the Bushfire Report and the recommendations from NSW Rural Fire Service have been included as recommended conditions of consent.

4.1.10 Fencing

The proposed plans detail a front fence and entry gate on the East Elevation (DAMod4001) that was not detailed in the Development Application, or subsequent Stamped Plans from DA2021/2626.

The proposed East Elevation Plan (DAMod4001) details the front fence as existing, and the Ground Floor Plan (DAMod2003) denotes the fence as an existing wall. It is noted, that a site visit that was undertaken for the Development Application in April 2022 and there was an existing front fence, and gate. However, the front fence, and gate detailed on the Modification Plans is of a different style to the front fence, and gate from 2022.

It is unclear if the front fence, and gate as detailed on the Modification Plans is proposed, or previously omitted from the plans. As such, a condition has been recommended to exclude the front fence and entry gate from the application as the front fence, and gate is inconsistent between the Stamped Plans from DA2021/2626, and Proposed Modification Plans.

Therefore, a condition is recommended to exclude the front fence, and gate from the approved plans. As these works appear to be inconsistent with the approved plans and an Occupation Certificate yet to be issued, they are matters for the Certifier to investigate and resolve.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

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

PLANNING CONCLUSION

This proposal, for the Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage has been referred to the Development Determination Panel (DDP) due to variation greater than 10% to height of buildings under Manly Local Environmental Plan 2013.

The proposal was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

The critical assessment issues relate to the proposed variation to the height of buildings development standard.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, subject to recommended conditions. 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. Mod2023/0149 for Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage on land at Lot 1 DP 1066457,36 Gurney Crescent, SEAFORTH, subject to the conditions printed below:

A. Add Condition No.1A - 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) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By

Site Plan - DAMod1004, Rev 1	11 May 2023	Rapid Plans
Demolition Lower Ground Floor Plan - DAMod1008, Rev 1	11 May 2023	Rapid Plans
Demolition Ground Floor Plan - DAMod1009, Rev 1	11 May 2023	Rapid Plans
Demolition First Floor - DAMod1010, Rev 1	11 May 2023	Rapid Plans
Lower Ground Floor - DAMod2002, Rev 1	11 May 2023	Rapid Plans
Ground Floor - DAMod2003, Rev 1	11 May 2023	Rapid Plans
First Floor - DAMod2004, Rev 1	11 May 2023	Rapid Plans
Section 1 - DAMod3000, Rev 1	11 May 2023	Rapid Plans
Section 2 - DAMod3001, Rev 1	11 May 2023	Rapid Plans
Elevation North - DAMod4000, Rev 1	11 May 2023	Rapid Plans
Elevation East - DAMod4001, Rev 1	11 May 2023	Rapid Plans
Elevation South - DAMod4002, Rev 1	11 May 2023	Rapid Plans
Elevation West - DAMod4003, Rev 1	11 May 2023	Rapid Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (No.A444207_05)	11 May 2023	Rapid Plans
Bushfire Report	6 December 2022	Bushfire Planning Services
Materials & Colour Sample Board - DAMod5001, Rev 1	11 May 2023	Rapid Plans

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan - DA1014, Rev 1	11 May 2023	Rapid Plans

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	n.d.	No Author

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

B. Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements to read as follows:

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated

Aboriginal Heritage Office	Referral - Aboriginal Heritage Office - MOD2023/0149 - 36 Gurney Crescent Seaforth	13 April 2023
Ausgrid	Ausgrid Referral Reponse - Overhead cables	14 April 2023
	Ausgrid Referral Response - OH and UG cables	14 April 2023
	Ausgrid Referral Response - Network Standard Cables	14 April 2023
NSW Rural Fire Service	Referral - RFS - 26 Gurney Crescent Seaforth	14 April 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

C. Add Condition 9A - Amendments to the approved plans to read as follows:

The following amendments are to be made to the approved plans:

- Deletion of the front fence, and gate with the area adjacent to the entry to be consistent with that originally approved under the DA.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.