

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0312
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 2 DP 556990, 7 Laura Street SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA0084/2017 granted for alterations and additions to the existing dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Nicholas Peter Manettas
Applicant:	N Manettas

Application lodged:	06/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

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 - Zone E3 Environmental Management

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

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

Manly Development Control Plan - 4.1.2.1 Wall Height

Manly Development Control Plan - 4.1.2.2 Number of Storeys

Manly Development Control Plan - 4.1.2.3 Roof Height

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

Manly Development Control Plan - 4.1.4.1 Street Front setbacks

Manly Development Control Plan - 4.1.4.2 Side setbacks and secondary street frontages

Manly Development Control Plan - 4.1.4.5 Foreshore Building Lines and Foreshore Area

Manly Development Control Plan - 4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2

Manly Development Control Plan - 4.1.5.2 Landscaped Area

Manly Development Control Plan - 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 2 DP 556990 , 7 Laura Street SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one allotment located on the south-eastern side of Laura Lane. The site is irregular in shape with a frontage of 29.615m along Laura Lane and a depth of 36.27m. The site has a surveyed area of 739.8m². The site is located within the E3 Environmental Management

zone and accommodates a multi-storey detached dwelling.

The site slopes approximately 12m from front (north) to rear (south).

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by multi-storey detached dwellings.

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:

Application 10.2017.216.1 for Alterations and additions to the existing dwelling house was approved on 13/11/2017 by delegated authority.

Application 10.2017.84.1 for Alterations and additions to the existing dwelling house was approved on 07/08/2017 by delegated authority.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification includes changes as follows:

Basement Level:

- Reconfiguration of eastern side wall

- Internal alterations
- Relocation of plant room and store to new basement below garage
- Extension of existing southern terrace

Ground Level:

- Removal of existing planter adjoining windows W02 and W03
- Reconfiguration of eastern staircase to access new basement below garage
- Minor change to entry courtyard RL
- Deletion of ornamental pool and replacement planting
- Extension of approved garage

First Floor:

- Changes to approved terrace
- Realignment of north-western external walls
- Internal alterations

External:

- Changes to windows and doors
- Replacement of existing roof

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 DA0084/2017, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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

Section 96(2) - Other Modifications	Comments
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 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 DA0084/2017.
(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 DA0084/2017 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 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.	No submissions were received in relation to this application.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> 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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to

Section 79C 'Matters for Consideration'	Comments
	the issue of a Construction Certificate. This clause is not relevant to this application.
Section 79C (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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

MEDIATION

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	1. GENERAL CONDITIONS RELATING TO APPROVAL 1. The recommendations detailed in the Section 96, Geotech Investigation: Alterations & Additions at 7 Laura Street, Seaforth, White Geotechnical Group 22nd November 2017 are to be with. 2. All other Coastal conditions as per Notice of Determination

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

External Referral Body	Comments
	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)

Nil

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	10.4m	10.6m	24.7%	No
Floor Space Ratio	0.4:1 (295.92sqm)	0.48:1 (355.1sqm)	0.47:1 (347.3sqm)	17.36%	No

Compliance Assessment

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone E3 Environmental Management

Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

The proposed modification will not unreasonably impact the ecological, scientific, cultural or aesthetic values present at the site.

- To provide for a limited range of development that does not have an adverse effect on those values.*

The proposed modification is generally consistent with the previous approval for alterations and additions to the existing dwelling and will not unreasonably impact the above values.

- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

No trees are proposed to be removed and the building envelope remains generally the same as the previous approval.

- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

The proposed rear setback is compliant and ensures that the proposed works do not unreasonably impact the nearby foreshore and bushland areas.

- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

The proposed works are separated from the immediate foreshore area and the landscaped area of the site is compliant.

- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposed dwelling is not of unreasonable bulk or scale in the context of the site and is consistent with the existing vegetation and topography.

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.3 Height of Buildings development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	10.6m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	24.7%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are:

(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 includes a new roof and changes to the existing parapet, which will result in an increased overall building height of 0.2m. The proposed non-compliant height is consistent with the topographic landscape and the neighbouring dwellings along Laura Street.

b) to control the bulk and scale of buildings,,

Comment:

The proposed bulk and scale of the dwelling is not excessive or unreasonable in the context of the subject site and nearby developments.

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 proposed increase to building height will result in no unreasonable impact on views to, from or between public space and residential development.

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:

The proposed building height will cause minimal additional overshadowing and will not unreasonably alter the compliance of the approved DA in relation to sunlight access.

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 proposed non-compliance will not unreasonably impact any existing vegetation and is consistent with the topography of the site.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of the E3 Environmental Management zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposed modification will not unreasonably impact the ecological, scientific, cultural or aesthetic values present at the site.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposed modification is generally consistent with the previous approval for alterations and additions to the existing dwelling and will not unreasonably impact the above values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

No trees are proposed to be removed and the building envelope remains generally the same as the previous approval.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation..*

Comment:

The proposed rear setback is compliant and ensures that the proposed works do not unreasonably impact the nearby foreshore and bushland areas.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposed works are separated from the immediate foreshore area and the landscaped area of the site is compliant.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed dwelling is not of unreasonable bulk or scale in the context of the site and is consistent with the existing vegetation and topography.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

Flexibility in this circumstance allows for development consistent with the surrounding properties with no unreasonable amenity impacts.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The proposed building height increase is a result of the replacement of the existing roof and new parapet and will not cause any unreasonable amenity impacts.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

The applicant has provided the following reasoning for the proposed increase to building height:

"The existing segmented roof is to be replaced with a single roof form to allow for better drainage.

The proposed new roof form will require a minor adjustment to the parapet level, which will r

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

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

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision which in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C 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 96 modification applications.

Notwithstanding that Clause 4.6 does not apply to Section 96 applications, the merits of the departure have been assessed with regards to the objectives of the floor space ratio development standard and the underlying objectives of the E4 Environmental Living zone.

(ii) 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.

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment:

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%.

The subject application is made under Section 96 of the Act and as such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required.

The following assessment of the variation to Clause 4.4 Floor Space Ratio development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	0.4:1 (295.92sqm)
Proposed:	0.47:1 (347.3sqm)
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	17.36%

The proposal must satisfy the objectives of Clause 4.4 Floor Space Ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Floor space ratio limitation pursuant to Clause 4.4 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The bulk and scale of the proposed development is consistent with the existing streetscape and previous approval.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed building bulk is not excessive in relation to the subject site or surrounding properties, and will not obscure any important landscape or townscape features.

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

Comment:

The proposed modification retains largely the same appearance as the previous approval.

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

Comment:

There is no substantial increase to the approved building footprint and the proposal will result in no unreasonable impact on the use or enjoyment of adjoining land or the public domain.

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

Comment:

N/A

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of the E3 Environmental Management zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposed modification will not unreasonably impact the ecological, scientific, cultural or

aesthetic values present at the site.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposed modification is generally consistent with the previous approval for alterations and additions to the existing dwelling and will not unreasonably impact the above values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

No trees are proposed to be removed and the building envelope remains generally the same as the previous approval.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposed rear setback is compliant and ensures that the proposed works do not unreasonably impact the nearby foreshore and bushland areas.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposed works are separated from the immediate foreshore area and the landscaped area of the site is compliant.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed dwelling is not of unreasonable bulk or scale in the context of the site and is consistent with the existing vegetation and topography.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

The proposed modification includes an overall decrease to the approved FSR variation.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The proposed reduction the FSR variation is a good outcome in this case.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

The proposed basement floor plan required significant changes due to the location of the existing encased sewer line within the building footprint. The changes to this floor plan resulted in a decrease to the previously approved FSR.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

Comment: Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision which in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C 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 96 modification applications.

Notwithstanding that Clause 4.6 does not apply to Section 96 applications, the merits of the departure have been assessed with regards to the objectives of the floor space ratio development standard and the underlying objectives of the E4 Environmental Living zone.

(ii) 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.

Comment:

For reasons detailed above, the proposal is considered to be consistent/inconsistent with the objectives of the <insert zone> zone in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment:

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%.

The subject application is made under Section 96 of the Act and as such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development to:

- (a) to ensure that earthworks 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, and
- (b) to allow earthworks of a minor nature without requiring separate development consent.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

Clause 6.2 - 'Matters for Consideration'	Comments
(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality	The drainage patterns of the site have likely been significantly altered as a result of previous development on the site.
(b) the effect of the proposed development on the likely future use or redevelopment of the land	The proposed excavation will not unreasonably impact future residential development on the land.
(c) the quality of the fill or the soil to be excavated, or both	No filling is proposed. Conditions included in the original consent ensure that all excavated materials are appropriately disposed of.
(d) the effect of the proposed development on the existing and likely amenity of adjoining properties	The proposed excavation is contained within the approved building footprint and is not visible from the adjoining properties or public spaces.
(e) the source of any fill material and the destination of any excavated material	Conditions from the original consent to ensure that all excavated materials are appropriately disposed of.
(f) the likelihood of disturbing relics	In relation to DA0084/2017, Council's Aboriginal Heritage Officer commented "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." As all proposed excavation is contained within the building footprint it is unlikely that any relics will be disturbed.
(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area	Appropriate stormwater management conditions are included to ensure that the proposed excavation does not unreasonably impact the harbour or adjoining foreshore area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2013, MDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 739.8sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	West: 8m (based on gradient 1:4+)	10.2 - 10.9m	11m	No
	East: 7.2m (based on gradient 1:8.5)	Garage - 4.56m	No change proposed	N/A
		Dwelling - 7.3m	6.8m	Yes

4.1.2.2 Number of Storeys	2	3	No change proposed	N/A
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.4m	No change proposed	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m Dwelling - 1.2m	Garage - 0.9m	No change proposed	N/A
		Dwelling - 1.2m	No change proposed	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	Eastern garage - 1.52	1.1m	No change proposed	N/A
	Eastern dwelling - 1.2	4.2m	No change proposed	N/A
	Western - 3.63m	2m	No change proposed	N/A
4.1.4.4 Rear Setbacks	8m	10.38m	8.4m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	65% (481sqm)	67% (495sqm)	Yes
	Above ground 25% of TOS (120.25sqm)	50sqm	No change proposed	N/A
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	65.1% (313.47sqm)	62% (306.9sqm)	Yes
4.1.5.3 Private Open Space	18m per dwelling	44sqm	No change proposed	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No change proposed	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1.1 Complementary Design and Visual Improvement	Yes	Yes
3.1.1.4 Garages, Carports and Hardstand Areas	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.2.1 Consideration of Heritage Significance	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	N/A	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	N/A	N/A
4.1.1.1 Residential Density and Dwelling Size	N/A	N/A
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.2.1 Wall Height	No	Yes
4.1.2.2 Number of Storeys	N/A	Yes
4.1.2.3 Roof Height	N/A	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	N/A	Yes
4.1.4.1 Street Front setbacks	N/A	Yes
4.1.4.2 Side setbacks and secondary street frontages	N/A	Yes
4.1.4.4 Rear Setbacks	Yes	Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	N/A	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	N/A	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Yes	Yes
4.1.5.2 Landscaped Area	Yes	Yes
4.1.5.3 Private Open Space	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.1.1 Additional matters for consideration	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

The proposed modification includes a minor increase to the width of the approved garage, which will have no unreasonable visual impact on the street frontage.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

The proposed garage is consistent with the identified streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be

appropriate.

New landscaped area is proposed as part of this application and no front fence is proposed.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The proposed modification will result in no unreasonable overshadowing of the subject site or surrounding properties. At 9am and 12 pm the shadow falls on Laura Lane to the east, the subject site, and the harbour foreshore area to the south of the site. At 3pm there will be some minor additional overshadowing of No. 6 Jenner Street.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The proposed modification provides adequate sunlight access to the subject site and adjoining properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed modification retains sufficient setbacks and modulation to minimise overshadowing of the subject site and adjoining properties.

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

No changes are proposed to windows or doors facing side boundaries. There is a minor extension to the western end of the existing first floor terrace. However, sufficient setbacks and physical separation from the neighbouring property to the west are retained.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposed modification provides sufficient privacy and sunlight access to the subject site and surrounding properties.

Objective 3) To encourage awareness of neighbourhood security.

The proposed modification will not impact opportunities for passive surveillance.

3.4.3 Maintenance of Views

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and

from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths). Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

The proposed modification retains in generally the same building envelope with an increase to the overall building height of 0.2m. As such, the proposal will result in no unreasonable view impacts on the surrounding properties.

4.1.1 Dwelling Density, Dwelling Size and Subdivision

As existing

4.1.1.1 Residential Density and Dwelling Size

As existing

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

(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 proposed wall height is consistent with the topography and surrounding developments and streetscape.

b) to control the bulk and scale of buildings,,

Comment:

The bulk and scale of the proposed dwelling is not excessive and is consistent with the surrounding developments.

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 proposed modification will not unreasonably impact views to, from or between 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:

The proposed increase to wall height does not unreasonably alter the existing compliance with sunlight access and overshadowing.

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 proposed dwelling is consistent with the topography and will not unreasonably impact any existing vegetation or surrounding land uses.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2011 / MDCP 2013 (inclusive of Part 3) and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

4.1.2.1 Wall Height

See Clause 4.1.2

4.1.2.2 Number of Storeys

As existing

4.1.2.3 Roof Height

As approved

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

As approved

4.1.4.1 Street Front setbacks

As approved

4.1.4.2 Side setbacks and secondary street frontages

As approved

4.1.4.5 Foreshore Building Lines and Foreshore Area

As approved

4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2

As approved

4.1.5.2 Landscaped Area

As approved

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas

As existing/approved

4.4.5 Earthworks (Excavation and Filling)

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

The excavation proposed in this application is contained wholly within the approved building footprint and is not perceptible from the streetscape or harbour. The natural flow of ground and surface water has likely already been significantly altered by previous development on the site and suitable stormwater management conditions are included in the consent to ensure there is no further unreasonable impact on stormwater drainage.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2011 / MDCP 2013 (inclusive of Part 3) and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

5.4.1 Foreshore Scenic Protection Area

The proposed modification largely retains the approved building height and envelope. As such, the proposal will have no unreasonable impacts on visual aesthetic amenity or views to and from Sydney Harbour.

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this 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. Mod2017/0312 for Modification of Development Consent DA0084/2017 granted for alterations and additions to the existing dwelling house on land at Lot 2 DP 556990,7 Laura Street, 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
S96 1503.200 Site Plan - Rev. D	31 October 2017	Dino Raccanello Design Pty Ltd.
S96 1503.201 Basement Plan - Rev. D	31 October 2017	Dino Raccanello Design Pty Ltd.
S96 1503.202 Ground Floor Plan - Rev. D	31 October 2017	Dino Raccanello Design Pty Ltd.
S96 1503.203 First Floor Plan - Rev. D	31 October 2017	Dino Raccanello Design Pty Ltd.
S96 1503.204 Roof Plan - Rev. D	31 October 2017	Dino Raccanello Design Pty Ltd.
S96 1503.300 Section AA - Rev. D	31 October 2017	Dino Raccanello Design Pty Ltd.
S96 1503.400 South & North Elevations - Rev. D	31 October 2017	Dino Raccanello Design Pty Ltd.
S96 1503.401 East & West Elevations - Rev. D	31 October 2017	Dino Raccanello Design Pty Ltd.

Reports / Documentation – All recommendations and requirements contained within:

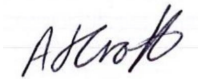
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	22 November 2017	White Geotechnical Group

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

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

Signed



Adam Croft, Planner

The application is determined under the delegated authority of:



Rodney Piggott, Manager Development Assessments

ATTACHMENT A

Notification Plan	Title	Date
 2017/518160	Plan - Notification	11/12/2017

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2017/518159	Plans - External	11/12/2017
 2017/518160	Plan - Notification	11/12/2017
 2017/518148	Plans - Survey	11/12/2017
 2017/518151	DELETE	11/12/2017
 2017/518153	Report - Geotechnical	11/12/2017
 2017/518155	Report - Statement of Environmental Effects	11/12/2017
 2017/518154	DELETE	11/12/2017
 2017/518157	Report - Waste Management Plan	11/12/2017
 MOD2017/0312	7 Laura Street SEAFORTH NSW 2092 - Section 96 Modifications - Section 96 (2) Environmental Impact	13/12/2017
 2017/520008	DA Acknowledgement Letter - N Manettas	14/12/2017
 2017/524811	Development Application Form	15/12/2017
 2017/524812	Applicant Details	15/12/2017
 2017/524813	Owner's Consent	15/12/2017
 2017/524815	Plans - Internal	15/12/2017
 2017/524816	Plans - Master Set	15/12/2017
 2017/534588	DA Acknowledgement Letter (not integrated) - N Manettas	21/12/2017
 2017/534618	Notification Letter - 12	21/12/2017
 2018/001608	Coastal Management Referral - MOD/2017/0312 - 7 Laura Street, Seaforth	02/01/2018