

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0441
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Responsible Officer:	Reeve Cocks
Land to be developed (Address):	Lot 25 DP 8075, 38 Bower Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2023/1448 granted for Alterations and additions to a dwelling house and associated works
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Alexander & Co

Application Lodged:	26/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	02/09/2024 to 16/09/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for Modification of Development Consent DA2023/1448 granted for Alterations and additions to a dwelling house and associated works.

Specifically the following works:

Basement Floor Level

- Partial enclosure of existing storage.
- Partial replacement of existing storage with bathroom and sauna addition.
- Addition of louvres window on the eastern elevation of the existing plant room.

Lower Ground Floor Level

- Excavation works for additional plant room, comms room and storage room.
- Demolition and replacement of existing non-compliant masonry in place with reinforced masonry (west and east elevations).
- Demolition and replacement of existing northern glass balustrade.
- Addition of balustrade adjacent to window WLG.01.
- Columnar & beam support at the lower ground external terrace to rectify structural issues in the existing ground floor terrace slab above.
- Addition of brick privacy screen at north lower ground terrace and west window WLG.01.
- Approved west external stairs material amended to in-situ concrete.
- Modification to the planting along the western access.

Ground Floor Level

- Modified stone entrance path with timber steps.
- Additional masonry wall to accommodate new entry door (DG.01)
- Internal reconfiguration including alterations to bedroom 1, laundry, staircase, foyer, and hallway.
- Addition of door (DG.08) on the southern elevation of bedroom 1.
- Addition of windows (WG.07, WG.13, WG.12, WG.05) on the eastern elevation of bedroom 1, ensuite 1, ground floor laundry, bathroom, and pantry.
- Alterations and additions to windows (WG.03 and WG.04).
- Addition of window (WG.11) on the western elevation of the lounge room area.
- Addition of partial screening to windows (WG.11 and WG.04).
- Addition of masonry screen wall on the eastern elevation of the ground floor terrace.
- Alterations and additions to outdoor BBQ joinery on the eastern elevation of the ground floor terrace.
- Alteration to door (DG.04) on the northern elevation including new metal frame sliding door.

First Floor Level

- Amendment to internal layout including new staircase.
- Amendments to external wall construction and finish type.
- Modification to ground floor roof requiring upstand. Upstand proposed to be located below approved first floor terrace planter.
- Addition of brick privacy screen at north living room window.
- Additional skylight to southern bedroom.
- Chimney flue raised 600mm from 420mm to 1000mm to comply with horizontal and vertical projection requirements.
- Awning over balcony extended.
- Modification to existing roof extent to infill missing corner.

Roof Level

- Alterations to reflect modifications below.
- Addition of a skylight (SK.01 on plans).
- Addition of 8 solar panels.
- Addition to concrete hob.
- Addition to roof ridges.

- Western roof increased from RL28.619 - 29.766 to RL 28.850 - 29.920.
- Eastern roof increased from RL 29.766 - RL 31.214 to RL 29.920 - RL 31.220.

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 Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 25 DP 8075 , 38 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Bower Street, Manly. The site is relatively regular in shape with a frontage of 16.27 metres along Bower Street and a maximum depth of 59.03 metres. T he site has a surveyed area of 825.3m². The site is located within the C3 Environmental Management zone and accommodates a three-storey detached dwelling house with a double garage. The site steeply slopes down approximately 13 metres from south (front) to north (rear) and contains significant

vegetation to the northern rear half of the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by multi-storey detached dwelling houses in landscaped settings. To the north is Marine Parade and the Shelly Beach Reserve foreshore.

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:

Development Application DA2023/1448

Alterations and additions to a dwelling house and associated works (Approved 13/12/2023)

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 DA2023/1448, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: • The development is significantly the same as originally approved. The development does not seek to remove any threatened species or largely reduce the approved landscaped area.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The 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 DA2023/1448 for the following reasons: • The development seeks to make amendments to elements approved in DA2023/1448. • The development does not seek to change the use of the site. • The development does not seek to substantially change the approved bulk and scale of the dwelling house, swimming pool and associated landscaping areas.
(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 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.

Section 4.55(1A) - Other Modifications	Comments
the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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 a 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. No additional information was requested in this case.

Section 4.15 'Matters for Consideration'	Comments
	<u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62</u> and/or <u>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 matter has been addressed via a condition of consent. <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 a 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 a 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 02/09/2024 to 16/09/2024 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Hugh Burns	45 Bower Street MANLY NSW 2095

The following issues were raised in the submissions:

- Increased Excavation & FSR Implications
- Chimney proposal

The above issues are addressed as follows:

- **Increased Excavation & FSR Implications**

The submissions raised concerns that the increased excavation for the plant room, comms room, and storage room will lead to greater effective FSR.

Comment:

The floor space ratio (FSR) of buildings on a site is the ratio of the gross floor area (GFA) of all buildings within the site to the site area. As defined in the Manly Local Environmental Plan 2013, gross floor area excludes any basement storage, and any plant rooms used exclusively for mechanical services or ducting. Given the location of the plant rooms and the ground floor above the plant rooms would meet the definition of a basement and therefore be excluded from FSR calculations (were they to be used for storage). Council has added a condition of consent requiring the rooms to be used as plant rooms and/or basement storage.

- **Proposed Chimney**

The submissions raised concerns that the chimney flue will result in view loss impacts from adjoining properties and present health impacts.

Comment:

Council contacted the objector requesting access to their site to assess the view loss concerns raised. Council did not receive a response within two (2) weeks and conducted an inspection from the front of the objectors property. Council contacted the objector a second time and did not receive a response within the seven (7) day deadline given. The chimney is small in bulk and scale and given the angle of viewing from the subject site is unlikely to result in unreasonable view loss impacts. The applicant has also confirmed that there will be no solid fuel heater. A full view loss assessment has been conducted within the assessment report.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2023/1448. The Arboricultural Impact Assessment identifies two trees to be transplanted, and no other impact to existing trees is foreseen. The proposed amendments will not change the landscape outcome approved in DA2023/1448, and as such the original conditions remain. Condition 32 Landscape Completion will be slightly amended as part of this modification. No further conditions are imposed.
NECC (Bushland and Biodiversity)	The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Manly LEP - Clause 6.5 Terrestrial Biodiversity • Manly DCP - Clause 5.4.2 Threatened Species and Critical Habitat Lands • Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat). The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, the development is to be accompanied by a 'test of significance' prepared in accordance with Section 7.3 of the BC Act. Given that the proposed modifications are largely within the existing footprint, Council's Biodiversity referral body have conducted a threatened species test of significance and are satisfied that the proposed development will not represent a significant impact, subject to recommended conditions to maintain bandicoot access and mitigate construction-related impacts. The proposed modifications would take place in previously disturbed areas. However, transplantation of two existing trees is also being proposed. As transplantation cannot be guaranteed to be successful a like for like tree replacement for Tree 7 (<i>Dicksonia antarctica</i>) will be conditioned. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	The application proposes modification to development consent DA2023/1448. Coasts and Catchments raise no concerns. All conditions imposed in DA2023/1448 remain.

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	The application proposes modification to development consent DA2023/1448. Parks, Reserves and Foreshores raise no concerns. All conditions imposed in DA2023/1448 remain.

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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.A502363_04 dated 19 July 2024).

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

- b) coastal environmental values and natural coastal processes,
- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

It is considered by Council that the proposed development is not likely to have an adverse impact on any items raised in subsection (1) above. The development represents a reasonable and orderly development of the site which has taken into consideration potential impacts on environmental factors.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council is satisfied that the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:

- i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

It is considered by Council that the development is not likely to result in an adverse impact on items raised in paragraph (a). Council is satisfied that the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a).

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The site is located on the foreshore, however the development is minor in bulk and scale and does not seek to make significant changes to the dwelling house already approved. The development does not propose to remove, alter or impact threatened flora or valuable site features. Council is satisfied that the development is not likely to increase risk of coastal hazards on the land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The Northern Beaches Council currently has two (2) active Coastal Zone Management Plans (CZMP's), CZMP for Bilgola Beach (Mona Vale) and CZMP for Collaroy-Narrabeen Beach and Fishermans Beach 2016. No CZMP's relate to the subject site.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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	
Height of Buildings:	8.5m	9.866m	9.35m (increase
Floor Space Ratio	FSR: 0.45:1	FSR: 0.424:1 (350m ²)	

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
6.15 Tourist and visitor accommodation	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.35m (roof ridge)
Existing/Approved: 9.866m Maximum height.	9.27m (first floor balcony)

	awning)
Percentage variation to requirement:	9 - 10%

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 C3 Environmental Management 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:

The increase in non-compliance is minor and will not result in an adverse impact on the public realm or adjoining neighbours.

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

Comment:

It is considered that the development is consistent with objectives (c) and (g) of the Environmental Planning and Assessment Act 1979 No 203.

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 minor increase in building height will remain consistent with the topographic landscape and is consistent with the prevailing building height and desired future streetscape character in the locality.

b) to control the bulk and scale of buildings,

Comment:

The development will not become unreasonable in bulk or scale as a result of the minor additions to height proposed in this modification application.

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 development will not result in any significant view loss stated above.

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 development will not unreasonably impact solar access to public and private open spaces.

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 amendments are significantly within the existing built form and will not result in an adverse impact on vegetation or remnant bushland.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment

The development will not impact any area with special ecological, scientific, cultural or aesthetic values.

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

Comment

The modifications proposed are minor and are significantly the same as what has been approved by Council.

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

Comment

The development does not seek to remove any additional trees and is considered to be consistent with the desired use of the site and locality.

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

Comment

The development is consistent in bulk and scale with other residential developments in the area and is unlikely to unreasonably negatively impact nearby foreshores, geological features and bushland.

- *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 modifications are considered to be minimal and unlikely to significantly change the stormwater characteristics of the site.

- *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 height and bulk of the development are considered to be consistent with that of adjoining properties and will not unreasonably impact existing vegetation.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management 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.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

It is considered by Council that the proposed development is unlikely to result in detrimental visual amenity impacts on the harbour or coastal foreshore. The development generally improves the scenic quality of the coastline as viewed from public and private places. The development is consistent with what would be expected within the zone and general locality and reasonably reflects the existing characteristics of the locality. The development is unlikely to cause conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 825.3m²	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 500m ²	1 dwelling on 825.3m ² site	-	Yes
	Dwelling Size: Min. 105m ²	350m ²	-	Yes
4.1.2.1 Wall Height	8m	east: 8.1m	-	as approved

		west: 9m	-	as approved
4.1.2.2 Number of Storeys	2	3	-	as approved
4.1.2.3 Roof Height	Height: 2.5m	Max. 1.5m	-	as approved
	Pitch: maximum 35 degrees	<35 degrees	-	as approved
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.5m, consistent with the prevailing building line	-	as approved
4.1.4.2 Side Setbacks and Secondary Street Frontages	east: Min. 2.7m (based on wall height)	Dwelling: Min. 2m	New works: consistent with existing and approved	as approved
	west: Min. 3m (based on wall height)	Dwelling: Min. 1.1m	New works: consistent with existing and approved	as approved
	Windows: Min. 3m	east: Min. 2.1m	New works: consistent with existing and approved	as approved
		west: Min. 2.6m	New works: consistent with existing and approved	as approved
4.1.4.4 Rear Setbacks	8m	Min. 15.8m	-	as approved
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	Min. 15.8m	-	as approved
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space Min. 55% of site area (423.9m ²)	65.84% (543.4m ²)	63.2% (522m ²)	Yes
	Open space above ground Max. 25% of total open space (135.85m ²)	16.48% (89.6m ²)	17.1% (89.6m ²)	Yes
4.1.5.2 Landscaped Area	Landscaped area Min. 35% of open space	47.15% (256.2m ²)	46.7% (243.9m ²)	Yes
	3 native trees	>3 trees	-	as approved
4.1.5.3 Private Open Space	18m per dwelling	>18m ²	-	as approved
4.1.6.1 Parking Design and the Location of	Maximum 50% of frontage up to maximum	7.8m, <50%	-	as approved

Garages, Carports or Hardstand Areas	6.2m			
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2.85m	3.85m	No
	1m curtilage side/rear setback	side: 0.8m	side: Min. 0.36m	No
		rear: 5.88m	rear: Min. 5.01m	Yes
	1.5m water side/rear setback	side: 1m	side: Min. 0.58m	No
		rear: 6.08m	rear: 5.3m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	as approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	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
3.6 Accessibility	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)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	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
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The view impacted is an obscured partial water view from across Bower Street. The view is blocked by

multiple mature street trees as can be seen below.



The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

Council was unable to gain access to the objectors property after multiple attempts at contact. It is presumed that the rooms impacted are the first storey northern facing rooms. Views from these rooms are already obscured by existing mature trees within the objectors (No. 45 Bower Street) own property (as can be seen below). It is considered that any view impacted by the change in chimney height and minor increase in ridge level are likely already obscured by the trees on both sides of the Street.



The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

The impact is considered to be minor in this circumstance given that the view is already obstructed and that the portion of the view lost is small.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The amendment in chimney height has been proposed so that the chimney will be compliant with the relevant legislation. It is considered that the proposed design is consistent with the desired outcomes to ensure safety and reduce risks of fire. Council considered an alternative designs, however given the minimal impact on neighbours is satisfied that the development is acceptable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

The development results in a minor reduction in landscaped area. The reduction is a result of the amendments made to the approved plunge pool, the development remains compliant and no further action is required.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The development proposes to increase the swimming pool height above ground, reduce curtilage side and rear setbacks and reduce the minimum water side setback (see built form table for measurements). It should be noted that these non-compliances are minor increases from previously approved non-compliances and are unlikely to result in the development becoming inconsistent with the objectives of the control as demonstrated below.

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 be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposed plunge pool is located within the rear setback approximately 400mm off of the eastern side boundary with No. 40 Bower Street. Located adjacent to the proposed plunge pool at 40 Bower

Street is an existing swimming pool. The dwelling house on 40 Bower Street is located significantly away (both in height and distance) from the plunge pool. It is considered that the plunge pool is unlikely to result in unreasonable privacy impacts (visually and aurally) given the existing location of the swimming pool and dwelling house at 40 Bower Street.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The plunge pool will not be visible from the street and will have no impacts on the streetscape or established character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The subject site provides 243.9m² or 46.7% of landscaped area. It is considered that the more than compliant landscaped area on site satisfactorily meets the objective of the control.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The plunge pool is unlikely to be used as an emergency water resource given its proximity to the ocean and larger swimming pools on adjoining sites being more suited for the purpose. With this considered the plunge pool remains available to become an emergency water resource.

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 2024

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

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. Mod2024/0441 for Modification of Development Consent DA2023/1448 granted for Alterations and additions to a dwelling house and associated works on land at Lot 25 DP 8075,38 Bower Street, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-460757 Council Mod2024/0441	The date of this notice of determination	Modification of Development Consent DA2023/1448 granted for Alterations and additions to a dwelling house and associated works. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation Add Condition 30A - Bandicoot Conservation Measures Modify Condition 21 - Wildlife Protection Modify Condition 32 - Landscape Completion

Modified conditions

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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
1000	B	Site Plan Existing & Demolition	Alexander & Co.	18 August 2024
1001	B	Site Plan Proposed	Alexander & Co.	18 August 2024
2000	B	Basement - General Arrangement Plan - Existing & Demolition	Alexander & Co.	18 August 2024
2001	B	Lower Ground Floor - General Arrangement Plan - Existing & Demolition	Alexander & Co.	18 August 2024
2002	B	Ground Floor - General Arrangement Plan - Existing & Demolition	Alexander & Co.	18 August 2024
2003	B	First Floor - General Arrangement Plan - Existing & Demolition	Alexander & Co.	18 August 2024
2004	B	Roof - General Arrangement Plan - Existing & Demolition	Alexander & Co.	18 August 2024
2100	B	Basement - General Arrangement Plan - Proposed	Alexander & Co.	18 August 2024
2101	B	Lower Ground Floor - General Arrangement Plan - Proposed	Alexander & Co.	18 August 2024
2102	B	Ground Floor - General Arrangement Plan - Proposed	Alexander & Co.	18 August 2024
2103	B	First Floor - General Arrangement Plan - Proposed	Alexander & Co.	18 August 2024
2104	B	Roof - General Arrangement Plan - Roof	Alexander & Co.	18 August 2024
3000	B	General Arrangement - Elevation E01 Proposed	Alexander & Co.	18 August 2024

3001	B	General Arrangement - Elevation E02 Proposed	Alexander & Co.	18 August 2024
3002	B	General Arrangement - Elevation E03 Proposed	Alexander & Co.	18 August 2024
3003	B	General Arrangement - Elevation E04 Proposed	Alexander & Co.	18 August 2024
3100	B	Site Elevations - Elevation E05 Proposed	Alexander & Co.	18 August 2024
3101	B	Site Elevations - Elevation E06 & E08 Proposed	Alexander & Co.	18 August 2024
4100	B	General Arrangement - Section 01 Proposed	Alexander & Co.	18 August 2024
4101	B	General Arrangement - Section 02 Proposed	Alexander & Co.	18 August 2024
4102	B	General Arrangement - Section 03 Proposed	Alexander & Co.	18 August 2024
4103	B	General Arrangement - Section 04 & 05 Proposed	Alexander & Co.	18 August 2024
4200	B	Site Sections - Section S06 Proposed	Alexander & Co.	18 August 2024
0567-8000	B	Material Palette	Alexander & Co.	18 August 2024
LP 01	B	Landscape Plan - Level 1	Edwina Stuart	16 August 2024
H01	2	Cover Sheet & Notes	Heinz Consulting Engineers	16 July 2024
H02	2	Stormwater Plans & Details	Heinz Consulting Engineers	16 July 2024
H03	2	Stormwater Plans & Details	Heinz Consulting Engineers	16 July 2024
H04	2	Stormwater Plans & Details	Heinz Consulting Engineers	16 July 2024
H05	2	Erosion & Sediment Control Plan & Details	Heinz Consulting Engineers	16 July 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Basix Certificate	A502363_04	Efficient Living Pty Ltd	19 July 2024
Stormwater Report	-	Heinz Consulting Engineers	16 July 2024
Arborist Report	-	Ezigrow	18 July 2024

Geotechnical Report	-	AssetGeoEnviro	14 August 2024
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition 30A - Bandicoot Conservation Measures to read as follows:

All workers are to be given an induction on bandicoot conservation measures prior to commencement of their duties on site.

The site induction is to include information about:

- how to identify a bandicoot
- the conservation significance of the endangered bandicoot population
- measures in place to be implemented for their protection
- who to contact should a bandicoot be identified on site and relevant contact details.

Written confirmation of this induction is to be signed by all workers and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect Long-nosed Bandicoots which may be utilising the site.

C. Modify Condition 21 - Wildlife Protection to read as follows:

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

If an uninjured Long-nosed Bandicoot enters the worksite or is found during a survey of holes/stockpiles, works must cease until the Bandicoot has safely vacated the worksite. Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (NPWS). For assistance to relocate a Bandicoot from the worksite, or to report a dead or injured Bandicoot, please contact:

National Parks & Wildlife Service – Duty Officer (9457 9577)

Reason: To protect native wildlife.

D. Modify Condition 32 - Landscape Completion to read as follows:

a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings LP01, LP02, LP03, PS01 by Edwina Stuart dated 16/07/24), and inclusive of the following conditions:

- landscape works are to be contained within the legal property boundaries,
- planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
- all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled

if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,

iv) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

vi) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

b) prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

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

Signed



Reeve Cocks, Principal Planner

The application is determined on 25/11/2024, under the delegated authority of:



Rodney Piggott, Manager Development Assessments