



STATEMENT OF MODIFICATION

**Section 4.55 (2)
Modification to
DA2023/1367 Alterations
and Additions to a
Dwelling House and
Associated Works**

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This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

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Report prepared for:

Kathleen O’Grady

20 March 2025

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1. Introduction and Background Information

1.1 Introduction

This report has been prepared as supporting documentation for a Section 4.55 (2) modification application to DA2023/1367 for alterations and additions to a dwelling house and associated works at 30 Pacific Street, Manly, being Lot 2 in Deposited Plan 900589.

This report has been prepared following instructions from the owner Kathleen O’Grady. In preparing this application consideration has been given to the following:

- *Environmental Planning and Assessment Act, 1979* (as amended) (EP&A Act);
- Environmental Planning and Assessment Regulation 2021;
- Relevant State Environmental Planning Policies;
- Manly Local Environmental Plan 2013 (MLEP 2013);
- Manly Development Control Plan (MDCP);
- Survey Plan prepared by CMS Surveyors;
- Architectural Plans prepared by Vaughan Architects;
- Stormwater Management Plan prepared by Taylor Consulting;
- BASIX Certificate prepared by Action Plans;
- Geotechnical Assessment prepared by Ascent Geo;
- Heritage Impact Assessment prepared by BI Architects.

This Statement of Modification describes the proposed development having particular regard to the provisions of Section 4.15 of the EP&A Act 1979 and examines any potential environmental impacts with regard to the relevant sections of the Act, State policies and requirements of Northern Beaches Council’s MDCP.

The conclusions of the Statement of Modification are that the proposed development, (a) is substantially the same development as that approved by DA2023/1367, (b) is permissible with development consent and (c) is acceptable on its merits having regard to the relevant statutory planning instruments including Manly Local Environmental Plan 2013 and relevant planning policies of Manly Development Control Plan. In particular, the Modification Application has been carefully designed so to avoid any adverse impact beyond what was approved by DA2023/1367.

Accordingly, the Section 4.55 (2) Modification application warrants approval.

1.2 Background Information

The site was the subject of Development Application DA2023/1367 which was approved by Northern Beaches Council on 26 April 2024.

This application relates to minor amendments which are detailed and assessed throughout this Report as a result of design changes for a more usable and functional dwelling through discussions with the project builder and project architect.

2. Site Profile

2.1 Property Description

The subject allotment is described as 30 Pacific Street, Manly, being Lot 2 within Deposited Plan 900589. The site is zoned R3 Medium Density Residential under Manly Local Environmental Plan 2013.

The site is not listed as a heritage item, nor is it located within a heritage conservation area. The site is adjacent to heritage items been the street kerb and street trees.

2.2 Site and Locality Description

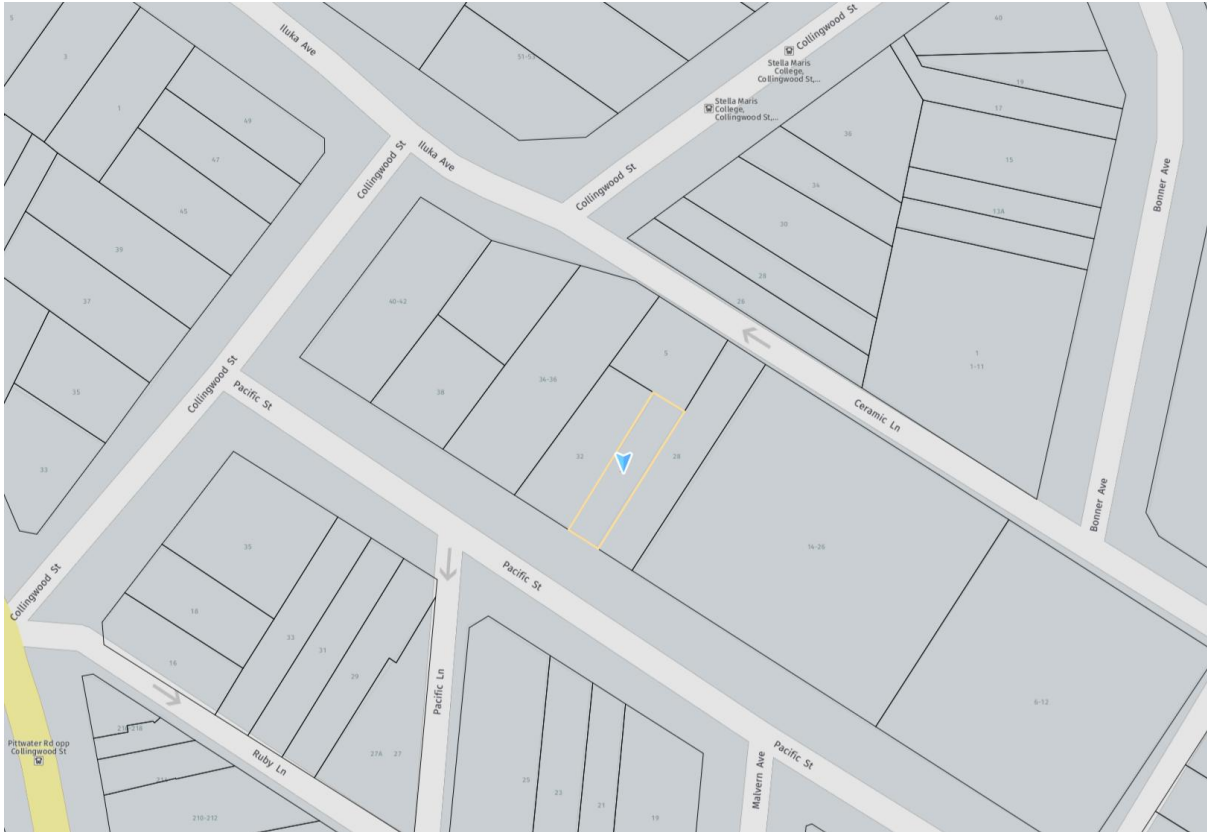
The site is located on the northern side of Pacific Street to the east of the intersection with Pacific Lane. The site is rectangular in shape with a 7.01m frontage to Pacific Street and a depth of 30.685m. The site existing does not have vehicular access. The total site area is 215.1sqm. The site is relatively flat with a gentle fall from the rear to the front of the property.

The locality maps on the following page show the location and area of the site:

Locality Maps



Source: Nearmap 2025



Source: Nearmap 2025

The immediate locality has a variety of residential property types and sizes. The existing surrounding development comprises a mix of single to three storey dwelling houses and up to five storey residential flat buildings.

It is noted that the adjoining properties to the north (24 Collingwood Street) and the west (32 Pacific Street) both have approvals as three storey dwelling houses. Images of the approvals are included within the visual analysis.

A visual analysis on the following pages outlines the existing site and the bulk and scale of the area.

Visual Analysis



Photograph of the site – 30 Pacific Street, Manly



Photograph of the site and adjoining properties to the west – note 32 Pacific Street has approval for a three storey dwelling house



Photograph from the intersection of Malvern Road and Pacific Street looking north-east – note bulk and scale of 6-12 Pacific Street



Photograph from the intersection of Malvern Road and Pacific Street looking north – note bulk and scale of 14-26 Pacific Street



Photograph looking north-east along Pacific Street – note three storey bulk and scale of 121 North Steyne



Photograph looking north-west along Pacific Street – note bulk and scale properties

3. Proposal

The proposed Section 4.55 (2) Modification is in relation to Development Application DA2023/1367 approved for *alterations and additions to a dwelling house and associated works*.

The proposed modification relates to minor amendments which are consistent with the existing streetscape and the objectives of the locality. In general, both the approved design and the proposed design contemplate a two to three storey dwelling house containing:

- **ground floor:** garage, entry hall, powder/laundry room, living, dining and kitchen areas and rear alfresco
- **first floor:** masterbed with ensuite and balcony, three bedrooms, bathroom, rear terrace; and
- **roof:** attic and rooftop balcony.

A detailed description of proposed modification includes:

Ground Floor

- Relocated stairs
- Minor internal changes due to stair relocation
- New bay windows on eastern elevation
- Change to garage door

First Floor

- Front setback increased and building envelope reduced at south-western corner
- Front balcony increased in size
- Window reconfigurations both north-western and south-eastern facades
- Increased building envelope on portion of north-western façade

Roof/Attic

- Extent of rooftop balcony reduced with new proposed balustrading
- Extent of roof reduced to the rear
- Attic area reconfiguration

External

- Swimming pool and pool terrace reconfigured
- Additional landscaping along north-western boundary
- New standing seam awning roof over entry
- New garage door

**Refer to architectural plans prepared by Vaughan Architects for a full description of all works.*

4. Statutory Planning Controls

The proposal has been assessed in accordance with the following instruments and controls:

- *Environmental Planning and Assessment Act 1979*, and Environmental Planning and Assessment Regulation 2021;
- State Environmental Planning Policies;
- Manly Local Environmental Plan 2013; and
- Manly Development Control Plan 2013.

4.1 *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) and Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)

The EP&A Act 1979 governs all environmental planning instruments within New South Wales. The proposal has been reviewed pursuant to the matters for consideration within Section 4.15 of the EP&A Act 1979.

The proposal is not Designated Development under Section 4.10 of the EP&A Act 1979 or Schedule 3 of the EPA Assessment Regulation 2021, therefore Northern Beaches Council is the Consent Authority. In addition, the proposal does not constitute an Integrated Development under the EP&A Act 1979, Section 4.46 with no further approvals from other Government agencies required.

Statutory Provisions for Section 4.55 (2) Modification

It is submitted that the proposed modification falls within the definition of a Section 4.55 Modification of Consents – generally, Clause (2), being:

*(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of

relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(5) (Repealed)

Source: EP&A Act 1979, Section 4.55

The modification power and substantially the same development

The modification power in section 4.55 of the EP&A Act is beneficial and facultative: *Waverley Council v Hairis Architects* [2002] NSWLEC 180.

The meaning of “modify” is to alter without radical transformation (*North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 97 LGERA 433).

The term “substantially” in “substantially the same development” means “essentially or materially or having the same essence” *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8.

To assess whether a consent is modified will be substantially the same development requires a comparison of the before and after situations. Differences may involve differences of the result or outcome, as well as differences of the process of implementation which have environmental implications or differences in outcomes.

In relation to being satisfied as to the precondition of substantially the same development, the decision of the Land and Environment Court in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 found that:

- The finding of fact that a modified development is substantially the same as the originally approved development requires a comparison between the development as approved originally and the development as proposed to be modified.
- The objective of the comparison is to ascertain whether the modified development is essentially or materially the same as that which was originally approved.
- The comparative task requires both a quantitative as well as a qualitative appreciation of the differences.
- The comparative task needs to be undertaken in a context, including the circumstances in which the original development consent was granted.
- The comparative task needs to assess the physical features that are changed, but also the environmental impacts of the changes.
- While the comparative task involves a comparison of the whole of the developments that are being compared, this should not operate to diminish a feature of the development which is important, material or essential. In these circumstances, a change to an important, material or essential feature of a development is likely to mean that the modified development is not substantially the same as the original consent. A feature that was an important issue to objectors in the original consent is likely to be an important, material or essential feature of a development

More recently, the Land and Environment Court considered the scope of expression ‘substantially the same’ in *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437 and [Canterbury-Bankstown Council v Realize Architecture Pty Ltd \[2024\] NSWLEC 31](#). The Court a modification application which had, in relation to a nine storey building proposed:

- Adding 2 extra floors to the approved development (over 50% of the floor place)
- Complete reconfiguration and relocation of the only driveway serving the 439 space carpark
- More than doubling of the size of the communal open space and completely reconfiguring it
- Adding 2,368m² (9.8%) of additional gross floor area (GFA)
- Adding an additional 10 units (2.5%), with internal reconfiguration of all units and a significantly different unit mix

At first instance, Espinosa C found that the proposal as modified:

- Would not change the nature or the intensity of the use;
- Would not change the relationship to surrounding developments as the modifications will maintain the character of the original approval;
- Where an increase in floor space and height is proposed on the upper levels, the development was consistent with the original approval as a whole, and the bulk and scale which establishes the streetscape character (from ground levels to levels 7/8) is unchanged per the original approval"
- Would not remove any critical element; and
- that the quantitative and qualitative changes identified led to a positive opinion that the modified development is substantially the same development as the originally approved development"

On appeal, Preston CJ endorsed at [7] the comparison of:

1. the "material and essential features" or "critical elements" of the proposed modified development against the original approved development
2. the "consequences, such as the environmental impacts" of carrying out the proposed modified development against the original approved development.

The appeal against the modification application was dismissed.

These recent decisions illustrate that the Land and Environment Court supports an approach whereby a more wholistic approach to the assessment of substantially the same is taken, and an undue focus on the minute or numerical differences in isolation is deemed unhelpful.

It is therefore submitted that the following outcomes are relevant to this proposed modification:

- This application for modification of a development consent does not significantly alter the external appearance or built form of the subject premises to any degree that it would represent a building of a different use to that approved.
- The footprints and setbacks of the approved and proposed floor plates are substantially the same.
- The broad modules within each floor remain the same (bedrooms on first floor, kitchen, living, dining, entertaining on the ground floor).
- The GFA in the proposed modification will remain the same as the approved GFA.
- The built form outcome is relatively the same in terms of overall bulk, scale and appearance of the development that has been previously approved.
- The amenity and streetscape outcomes of the original development consent are retained with no adverse impacts from the amendments in terms of amenity for privacy or visual impacts.

- The development does not give rise to any adverse impacts associated with views from the adjoining development which has already been the subject of detailed analysis as part of the original DA as approved by Council.
- The use of the land will remain for the purpose of a residential dwelling as approved by Northern Beaches Council on 26 April 2024 under DA2023/1367.

The application meets the requirements of a Section 4.55 (2) Modification, and therefore the consent authority can consider the merits of the application.

Environmental Planning and Assessment Regulation 2021

The following is an assessment under Clause 100 of the EPA Regulation 2021:

100 Content of modification application

(1) A modification application must contain the following information—

(a) the name and address of the applicant,

Refer to NSW Planning Portal.

(b) a description of the development that will be carried out under the development consent,

Refer to NSW Planning Portal.

(c) the address and folio identifier of the land on which the development will be carried out,

30 Pacific Street, Manly, being Lot 2 within Deposited Plan 900589

(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,

Refer to page 11 Heading 3 'The Proposal' within this report. Also refer to revised architectural plans prepared by Vaughan Architects.

(e) whether the modification is intended to—

(i) merely correct a minor error, misdescription or miscalculation, or

(ii) have another effect specified in the modification application,

The modification is submitted under Section 4.55 (2) of the Act. The effects are addressed throughout this report.

(f) a description of the expected impacts of the modification,

The expected impacts of the modification are addressed throughout this report. In summary, the expected impacts are minor with the application retaining the essence of the approval granted under DA2023/1367.

(g) an undertaking that the modified development will remain substantially the same as the development originally approved,

Refer to pages 12-15 of this report which address the matters noting the development will remain substantially the same as the development originally approved under DA2023/1367.

(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,

Not applicable.

(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,

Noted and provided with application package.

- (j) whether the modification application is being made to—*
 - (i) the Court under the Act, section 4.55, or*
 - (ii) the consent authority under the Act, section 4.56.*

The application is made to the consent authority under Section 4.55 of the Act.

(2) Subsection (1)(i) does not apply if the consent of the owner is not required under section 98.
Noted.

(3) If a modification application under the Act, section 4.55(1A) or (2) relates to BASIX development, or BASIX optional development if the development application was accompanied by a BASIX certificate, the application must be accompanied by—

- (a) the BASIX certificate, or*
- (b) a new BASIX certificate if the current BASIX certificate is no longer consistent with the development.*

Complies – revised BASIX Certificate provided with the application.

(4) In this section—

biodiversity credits information, in relation to a modification application, means the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under a biodiversity development assessment report if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the [Biodiversity Conservation Act 2016](#).

Not applicable.

4.2 State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy (Transport and Infrastructure) 2021

It is submitted that the proposal does not fall under the provisions of SEPP (Transport and Infrastructure) 2021 and therefore no assessment is required.

State Environmental Planning Policy (Sustainable Buildings) 2022

The proposal has been assessed in accordance with the relevant provisions of the BASIX and Energy Efficiency. A revised BASIX Certificate has been prepared and is submitted with the application which outlines the proposal's compliance with the provisions of BASIX and Energy Efficiency.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of the SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting of consent to the carrying out of any development on that land.

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless—*
 - (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is—

(a) land that is within an investigation area,

(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

It is submitted that the site has been used for the purpose of residential accommodation for decades. The builder/contractors should take all measures to ensure if contamination is found during construction that relevant procedures are followed to report and remove contaminated materials. A site inspection was undertaken with no landfill sited. As a result, it is our professional opinion that the site is classed low risk and no further assessments are required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to various rescinded SEPPs that related to the preservation of trees and vegetation, koala habitat and bushland in urban areas.

The aims of this Policy are to protect the biodiversity values of trees and other vegetation, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposed modification does not impact any trees as originally assessed under DA2023/1367. The development remains consistent with the provisions of the SEPP.

4.3 Manly Local Environmental Plan 2013 (MLEP2013)

The relevant matters to be considered under MLEP2013 are outlined below in the LEP summary compliance table.

Part 4: Principal Development Standards			
Standard	Permitted	Proposed	Comments
4.1 Minimum subdivision lot size	250sqm	N/A	N/A – no subdivision proposed.
4.1AA Minimum subdivision lot size for community title scheme	N/A	N/A	N/A
4.1A Minimum lot sizes for manor houses and multi dwelling housing (terraces) in Zone R2	N/A	N/A	N/A
4.2 Rural subdivision	N/A	N/A	N/A
4.3 Height of buildings	11m	9.8m	Complies – no change to the building height approved under DA2023/1367.
4.3A Special height provisions	N/A	N/A	N/A
4.4 Floor space ratio	0.75:1 (161.3sqm)	0.82:1 (177.3sqm) (if small lot provisions applied – 0.7092:1)	Merit assessment – No change to FSR approved under DA2023/1367 - Refer to assessment under Heading Clause 4.4 Floor Space Ratio.
4.5 Calculation of floor space ratio and site area	Noted	N/A	Noted
4.6 Exceptions to development standards	Noted	N/A	Not applicable – the application relates to a S.455(2) modification to the consent issued under DA2023/1367. No further/exacerbated variations are proposed outside of those approved under DA2023/1367.

Part 5: Miscellaneous Provisions	
Provisions	Comments
5.1 Relevant acquisition authority	N/A
5.2 Classification and reclassification of public land	N/A
5.3 Development near zone boundaries	N/A
5.4 Controls relating to miscellaneous permissible uses	N/A
5.5 (Repealed)	N/A
5.6 Architectural roof features	N/A

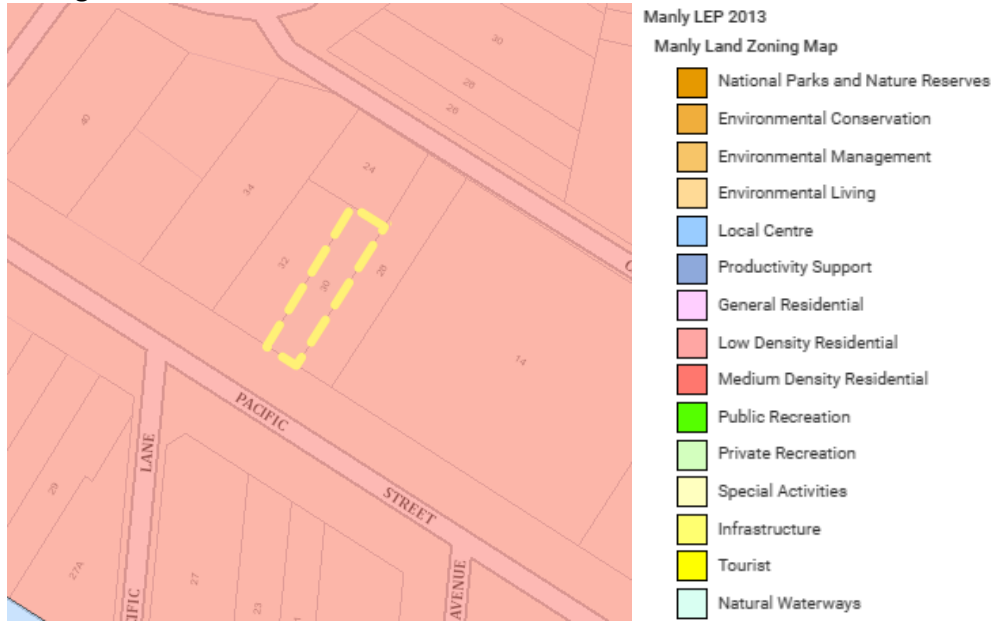
5.7 Development below mean high water mark	N/A
5.8 Conversion of fire alarms	N/A
5.9 Dwelling house or secondary dwelling affected by natural disaster	N/A
5.9AA (Repealed)	N/A
5.10 Heritage conservation	The site adjoins two heritage items, 12 stone kerbs and 1192 street trees. Refer to assessment under Heading 5.10.
5.11 Bush fire hazard reduction	N/A
5.12 Infrastructure development and use of existing buildings of the Crown	N/A
5.13 Eco-tourist facilities	N/A
5.14 Siding Spring Observatory – maintaining dark sky	N/A
5.15 Defence communications facility	N/A
5.16 Subdivision of, or dwellings on, land in certain rural, residential or environmental protection zones	N/A
5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations	N/A
5.18 Intensive livestock agriculture	N/A
5.19 Pond-based, tank-based and oyster aquaculture	N/A
5.20 Standards that cannot be used to refuse consent—playing and performing music	N/A
5.21 Flood Planning	N/A
5.22 Special Flood considerations	N/A
5.23 Public Bushland	N/A
5.24 Farm stay accommodation	N/A
5.25 Farm gate premises	N/A

Part 6: Relevant Additional Local Provisions	
Provisions	Comments
6.1 Acid sulfate soils	The site is identified as a Class 4 acid sulfate soils site. The proposal does not trigger any requirements for an acid sulfate soils report.
6.2 Earthworks	Complies – the proposal includes minor excavation works. Refer to assessment after this table.
6.3 (Repealed)	N/A
6.4 Stormwater management	Complies – the proposal includes details on relevant stormwater provisions. Refer to Stormwater Plans prepared by Taylor Consulting for full details.
6.5 Terrestrial biodiversity	N/A
6.6 Riparian land and watercourses	N/A

6.7 Wetlands	N/A
6.8 Landslip risk	N/A – the site is not identified as a geotechnical hazard or within a landslip area. Notwithstanding, a geotechnical assessment has been provided by Ascent Geo to support the application.
6.9 Foreshore scenic protection area	Complies – the site is identified on the foreshore scenic protection area map. The proposal in our professional opinion meets the relevant objectives. Refer to assessment after this table.
6.10 Limited development on foreshore area	N/A
6.11 Active street frontages	N/A
6.12 Essential services	Complies – the site existing has access to relevant essential services.
6.13 Design excellence	N/A
6.14 Requirement for development control plans	N/A
6.15 Tourist and visitor accommodation	N/A
6.16 Gross floor area in Zone B2	N/A
6.17 Health consulting rooms in Zones C3 and C4	N/A
6.18 (Repealed)	N/A
6.19 Development in St Patrick's Estate	N/A
6.20 Location of sex service premises	N/A
6.21 Noise impacts – licensed premises	N/A
6.22 Development for the purposes of secondary dwellings in certain residential and environmental protection zones	N/A

Relevant Schedules	
Schedule	Comments
Schedule 1 – Additional permitted uses	N/A
Schedule 2 – Exempt development	N/A
Schedule 3 – Complying development	N/A
Schedule 4 – Classification and reclassification of public land	N/A
Schedule 5 – Environmental heritage	N/A
Schedule 6 – Pond-based and tank-based aquaculture	N/A

Zoning Provisions



Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

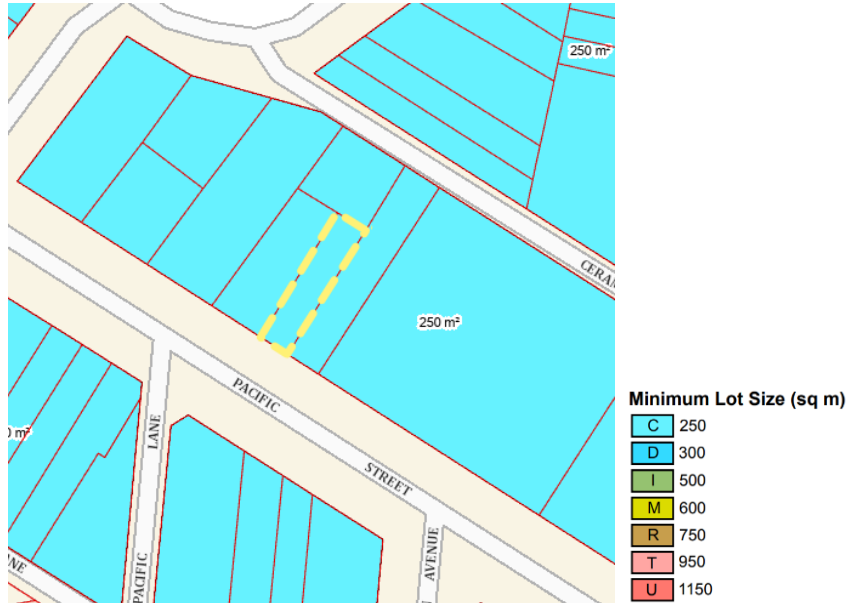
Attached dwellings; Boarding houses; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Home businesses; Home industries; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Recreation facilities (indoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Service stations; Shop top housing; Signage; Take away food and drink premises; Tank-based aquaculture; Tourist and visitor accommodation; Water recycling facilities; Water supply systems

4 Prohibited

Advertising structures; Farm stay accommodation; Water treatment facilities; Any other development not specified in item 2 or 3

Comment:

The site is zoned R3 Medium Density Residential. A dwelling house is a permissible land use with Council's consent. The modification retains the approved use and is consistent with the objectives of the zone.

Part 4 Principal development standards**4.1 Minimum subdivision lot size***(1) The objectives of this clause are as follows—*

- (a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- (b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- (c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

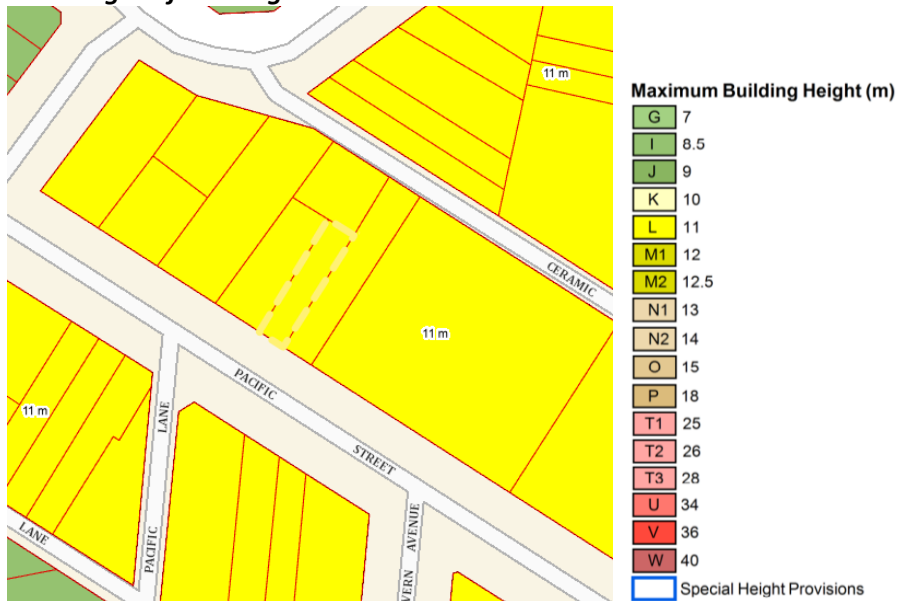
*(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.**(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.**(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.**(4) This clause does not apply in relation to the subdivision of any land—*

- (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
- (b) by any kind of subdivision under the Community Land Development Act 1989.*

Comment:

Not applicable – the site has a minimum lot size of 250sqm. The application does not include subdivision, therefore Clause 4.1 is not applicable to this assessment.

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,*
- (b) *to control the bulk and scale of buildings,*
- (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),*
- (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,*
- (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.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

Comment:

Complies – no change is proposed to the maximum building height of 9.8m approved under DA2023/1367 which is well below the 11m height allowance. The proposed building height achieves full compliance with the prescribed height limit for the site and does not give rise to any amenity impacts to adjoining properties. The proposal is of a bulk and scale consistent with the locality and will not adversely impact views or view corridors. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined below:

(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,*

This objective relates to streetscape character and in this regard the proposed works have been designed to be consistent with the bulk and scale of Pacific Street. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the surrounding development in this precinct noting the approvals for 32 Pacific

Street, 24 Collingwood Street and the three-five storey residential flat buildings. It is our considered opinion that the proposal for 30 Pacific Street is consistent with the intent and bulk and scale of the street, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality.

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

The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architect has worked tirelessly to design alterations and additions to the high-end dwelling that meet the site's small lot constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the existing streetscape (noting the building height of the adjoining neighbours) while accommodating a bulk and scale that is complementary to the natural environment. The development has been designed with varying setbacks and materials which reduce the bulk and scale and accommodates a dwelling that blends in with the streetscape. As assessed within objective (a) the proposal is consistent with the streetscape of Pacific Street, which therefore dictates the bulk and scale for the locality.

(c) to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height elements, has been appropriately located within the site to minimise disruption of views to nearby residential development and from surrounding public spaces. The proposal is consistent with this objective.

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, I am satisfied that the proposed building height will not give rise to any unacceptable public or private view affectation. The proposal is consistent with this objective.

(iii) views between public spaces (including the harbour and foreshores),

The building form and height has been appropriately distributed across the site such that the proposed building height will have no impact on views between public spaces. The proposal is consistent with this objective.

(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,

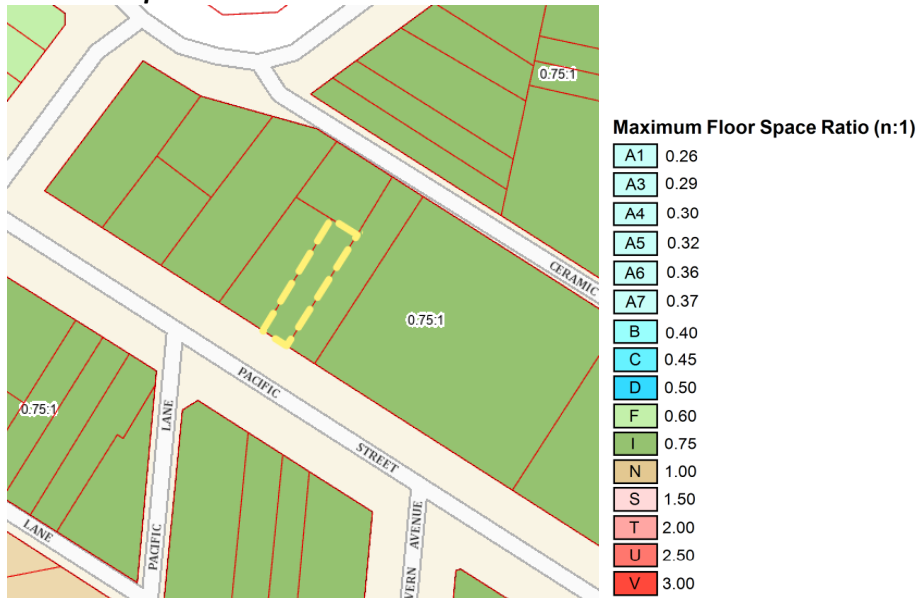
The application is accompanied by shadow diagrams drawings which depict the impact of shadowing on the neighbouring properties. The shadow diagrams show demonstrate that the proposed height and scale of the development will result in acceptable overshadowing which maintain access to sunlight to the adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June for premises at 28 Pacific Street. The proposal is consistent with this objective.

(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.

Not applicable – the site is not located within a recreation or environmental protection zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Pacific Street, and therefore the building height as proposed, can be supported by Northern Beaches Council.

4.4 Floor space ratio



(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,*
- (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,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and 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.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

(2A) *Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

Comment:

No change to FSR approved under DA2023/1367 - the site has a maximum FSR provision of 0.75:1 (161.3sqm). It has been determined that the modification, results in a total gross floor area on the site of 177.3sqm. This represents a floor space ratio of 0.82:1 and therefore non-compliant with the FSR standard by 16sqm or 9.92%. Therefore, the proposed GFA is numerically the same as what was originally approved under DA2023/1367.

I note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone “C” in which a minimum Lot area of 250sqm is required. The site having an area of only 215.1sqm is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 250sqm with an achievable gross floor area of 187.5sqm.

In this regard, the 177.3sqm of gross floor area proposed, representing an FSR of 0.7092:1 (based on 250sqm), is below the maximum prescribed gross floor area of 187.5sqm and as such complies with the DCP variation provision. We note that such provision contains the following note:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

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

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed GFA/FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an appropriate visual relationships between new development and the existing character and landscape of an area.

A review of the objectives of Clause 4.4 (and also Manly DCP 4.1.3.1) has been undertaken below:

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

The objective of Clause 4.4 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development. The surrounding area varies in size, bulk and scale, ranging from one to five storeys in height and varying setbacks. In particular, the approvals granted for 32 Pacific Street, 24 Collingwood Street and also 36 Malvern Avenue, guide the bulk and scale allowances for dwelling houses in the R3 Medium Density zone.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Pacific Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

This objective is achieved as the bulk and scale of development is entirely consistent with the existing and desired streetscape character.

(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,

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 177.3sqm of gross floor area proposed, representing an FSR of 0.7092:1 (based on 250sqm), this is below the maximum prescribed gross floor area of 187.5sqm and as such complies with the DCP variation provision applicable to undersized allotments. We note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

Objective 1) To ensure the scale of development does not obscure important landscape features.

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP nor DCP identify any important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify any landscape or townscape features that I would consider important in terms of their visual significance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

The proposal enhances the existing visual relationship acknowledging the development will enhance the existing dwelling on the site. The proposal has been designed to the desired character of the area while creating its own “image” and “identity for the area”. The proposal is consistent with the height, bulk and scale of existing dwellings along Pacific Street, noting the three-five storey nature of the streetscape, while ensuring a buffer through landscaping, and a building façade which has modulation and articulation.

It is noted that this objective is the same as the primary purpose/objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

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

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an appropriate visual relationships between new development and the existing

character and landscape of an area. That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to ensure the bulk and scale of development is consistent with the existing and desired streetscape character. Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which substantially increases the total open space and landscaped area MDCP controls from that existing. The building will sit within a landscaped setting. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

In responding to this objective, I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

The proposed modification will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building footprint which ensures the amenity and privacy of adjoining properties is maintained, with the intent of approval under DA2023/1367 maintained.

Privacy

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 177.3sqm of gross floor area proposed, representing an FSR of 0.7092:1 (based on 250sqm), this is below the maximum prescribed gross floor area of 187.5sqm and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

See also objectives for privacy at paragraph 3.4.2 of this plan.

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.*

As previously indicated, the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development minimises loss of privacy to adjacent and nearby development.

Notwithstanding, we note that all surrounding properties are orientated north-south with varying lot sizes and widths. On this basis, it is noted the intent of the approval granted under DA2023/1367 is maintained with the second floor attic maintained to the south front portion of the site to avoid overlooking to the rear of neighbouring properties.

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas on the ground floor to the north, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams DA16 to DA18 demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing north facing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

It is my considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and 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.

Not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. The proposed GFA resulting from the modification is numerically the same as what was approved under DA2023/1367 and can be supported by Council as submitted.

4.6 Exceptions to development standards

(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,

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

(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.

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

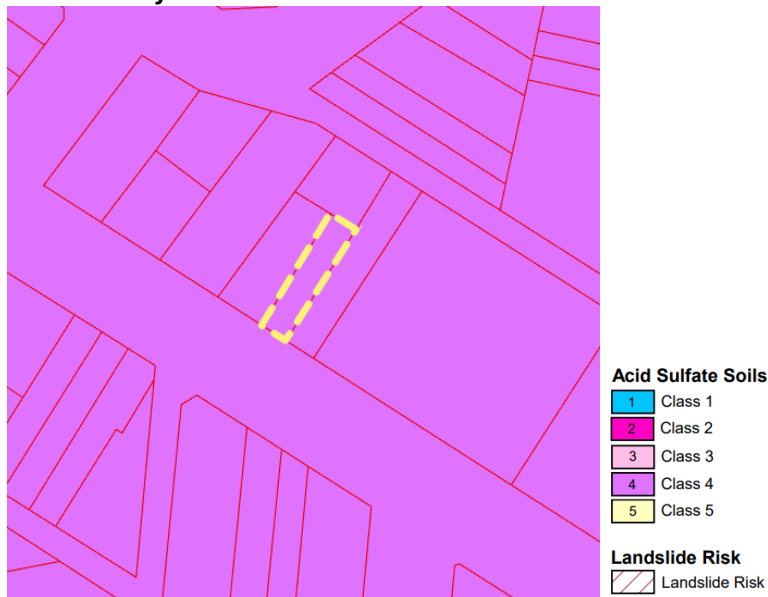
- (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the Planning Secretary has been obtained.*
 - (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.**
 - (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**
- Note—** When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
 - (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (ca) clause 6.15,*
 - (cb) a development standard on land to which clause 6.19 applies.**

Comment:

Not applicable – the application relates to a S.455(2) modification to the consent issued under DA2023/1367.

Part 6 Additional local provisions

6.1 Acid sulfate soils



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

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

Class of Works

land

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

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

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

- (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and
- (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.

(5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power)—

- (a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,*
- (b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),*
- (c) minor work, being work that costs less than \$20,000 (other than drainage work).*

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

- (a) the works involve the disturbance of less than 1 tonne of soil, and*
- (b) the works are not likely to lower the watertable.*

Comment:

Not applicable – the site is identified as class 4 acid sulfate soils. The proposed modification does not trigger any review requirements under Clause 6.1.

6.2 Earthworks

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

- (a) to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
- (b) to allow earthworks of a minor nature without requiring a separate development consent.*

(2) Development consent is required for earthworks unless—

- (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*
- (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.*

(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Note— The National Parks and Wildlife Act 1974, particularly section 86, deals with harming Aboriginal objects.

Comment: Complies – the proposal includes the requirement for minor excavation works with the proposed works. The proposal retains the intent of DA2023/1367 and the new swimming pool does not impact existing drainage lines. The proposal meets the objectives of Clause 6.2.

6.4 Stormwater management

(1) *The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.*

(2) *This clause applies to all land in residential, business, industrial and environmental protection zones.*

(3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—*

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

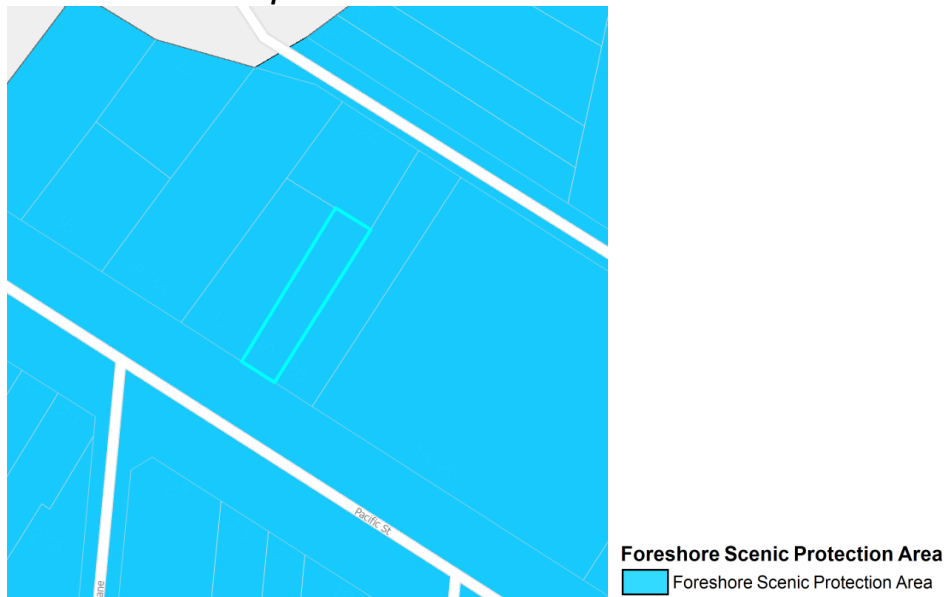
(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

Complies – the modification includes a revised Stormwater Management Plan prepared by Taylor Consulting.

6.9 Foreshore scenic protection area



(1) *The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.*

(2) *This clause applies to land that is shown as “Foreshore Scenic Protection Area” on the Foreshore Scenic Protection Area Map.*

(3) *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:

Complies – the site is identified within the foreshore scenic protection area. The proposed development will not result in any adverse impact to the scenic quality of the area or impact on the visual amenity of the Ocean foreshore. The proposed works will not be readily discernible from the foreshore area and in any event will not be perceived as inappropriate or jarring have regard to the built form characteristics established within the site’s visual catchment. These provisions are satisfied.

6.12 Essential services

(1) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

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

(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any essential service referred to in this clause.

Comment:

Complies – the site has access to relevant essential services.

General

The site is not identified on the following maps within MLEP2013:

- Bushfire Map
- Land Reservation Acquisition Map
- Heritage Map
- Landslide Risk Map
- Terrestrial Biodiversity Map, Wetlands Map, Watercourse Map
- Active Street Frontages Map
- Foreshore Building Line Map
- Key Sites Map

4.4 Manly Development Control Plan (MDCP)

In designing the proposed changes to the built form, due consideration has been given to the respective sections and objectives of MDCP2013, in particular:

- Part 3: General Principles of Development
- Part 4: Development Controls and Development Types

Key components of the DCP have been detailed below. The proposal is compliant with relevant provisions of the MDCP2013.

Part 3: General Principles of Development

3.1 Streetscapes and Townscapes

3.1 Streetscapes and Townscapes

Relevant DCP objectives to be met include the following:

Streetscape

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

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

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

Townscape

Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Objective 5) To assist in maintaining the character of the locality.

Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.

Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.

Comment:

The site is located within an established residential precinct. The proposal involves modifications to the approval granted under DA2023/1367. The existing streetscape consists of a mixture of one to five storey scaled buildings, all of which vary in terms of building configuration, front, rear and side setbacks and building heights. The proposal implements a contemporary approach and will positively contribute to the quality of the existing streetscape. The proposed modification retains the intent of the original consent granted under DA2023/1367, as a result the objectives of Clause 3.1: Streetscape and Townscape within the Manly Development Control Plan 2013 are met.

3.1.1 Streetscape (Residential areas)

Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

3.1.1.1 Complementary Design and Visual Improvement

- a) *Development in the streetscape (including buildings, fences and landscaping) should be designed to:*
- i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
 - ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
 - iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
 - iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
 - v) *address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
 - vi) *visually improve existing streetscapes through innovative design solutions; and*
 - vii) *incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.*

Setback Principles in Low Density Areas

- b) *In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore. See also paragraph 3.3 Landscaping and paragraph 4.1.5 Open Space and Landscaping.*

Setback Principles in Higher Density Areas

- c) *In higher density areas (including LEP Zones R1 & R3), careful consideration should be given to minimising any loss of sunlight, privacy and views of neighbours. This is especially relevant in the design of new residential flat buildings adjacent to smaller developments. See also paragraph 3.4 Amenity.*

Comment:

The proposed modification retains the intent of the original consent granted under DA2023/1367. The project architect has skillfully designed the proposal to enhance residential amenities and to provide character to the streetscape. The proposal will enhance the existing streetscape of Pacific Street and work towards the desired future character of the Manly locality. The proposal introduces a building of exceptional design quality into the existing streetscape where it will contribute to the streetscape quality of the area generally and reflect the desired future character of development in the area.

3.1.1.2 Front Fences and Gates

*See also paragraph 3.2.3 Fencing for Heritage Items and Conservation Areas.
See also paragraph 4.1.10 Fencing for height controls.*

- a) *Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) *Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) *Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*
- d) *Gates must not encroach on public land when opening or closing.*

Comment:

No changes to the approval granted under DA2023/1367.

3.1.1.3 Roofs and Dormer Windows

- a) *Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) *Roofs should be designed to avoid or minimise view loss and reflectivity.*
- c) *Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.*

Comment:

The proposed modification retains the intent of the original consent granted under DA2023/1367. The proposed modification implements minor amendments to the roof form and profile of the south-east facing dormer window. The proposal is of an appropriate bulk and scale consistent with the original roof form approved under DA2023/1367 and complements the streetscape with the new design noting that the streetscape does not have a consistent roof form. It is our professional opinion that the proposal meets the streetscape and the roof form complements the predominant form of the locality.

3.1.1.4 Garages, Carports and Hardstand Areas

- a) *Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:*
 - i) *its roof form, material choice and detailing by being subservient to the associated dwelling; and*
 - ii) *being compatible with the streetscape and the location in relation to front setback criteria.*
- b) *Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.*

Comment:

The proposed modification retains the intent of the original consent granted under DA2023/1367. The proposed modification includes a new garage door and standing seam awning roof over the extent of the garage. The proposed garage does not dominate the front façade or streetscape and

has been designed to blend in with natural building elements. The proposed modifications will have negligible impact to the streetscape and are compatible with the streetscape.

3.1.1.5 Garbage Areas

Buildings with more than 1 dwelling require garbage storage enclosures which are:

- a) not visible off site;*
- b) integrated into the building design;*
- c) unobtrusive and blend in with the design of front fences and walls when forward of the building;*
and
- d) located and designed with consideration given to the amenity of adjoining properties.*

Comment:

No changes to the approval granted under DA2023/1367.

3.2 Heritage Considerations

Relevant DCP objectives in relation to heritage in this plan include the following:

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- the foreshore, including its setting and associated views; and*
- potential archaeological sites, places of Aboriginal significance and places of natural significance.*

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

Comment:

Complies – the proposed modifications will have a negligible impact to that approved under DA2023/1367. The modification is supported by a revised heritage impact addendum letter prepared by BiArchitects declaring that the “original Heritage Impact Statement is still appropriate and relevant to the proposed amended design. As such, this addendum supports the revised plans as well as noting that the original heritage impact statement (approved under DA2023/1367) is still pertinent to the revised plans.”

3.3 Landscaping

3.3.1 Landscape Design

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

Comment:

The proposal does not result in the loss of any significant landscape features with a compliant landscaped area maintained.

3.3.2 Preservation of Trees or Bushland Vegetation

Objective 1) To protect and enhance the urban forest of the Northern Beaches.

Objective 2) To effectively manage the risks that come with an established urban forest through professional management of trees.

Objective 3) To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.

Objective 4) To protect and enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.

Objective 5) To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long term.

Objective 6) To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.

Comment:

The proposed modification retains the intent of what has been approved under DA2023/1367. The proposal has been designed to comply with the Preservation of Trees or Bushland Vegetation requirements for the site. The proposal will result in no threat to native animal species threatened species populations and endangered ecological communities.

The proposal does not trigger the requirement for an arboricultural impact assessment as the proposed works will not impact any native vegetation with any existing trees located greater than 5m from the proposed works, listed as exempt species or in regards to the existing street tree, is already approved under DA433/2005 and approved Construction Certificate. The following conditions are applicable from DA433/2005:

- DA 228 – One existing street tree permitted to be removed and replaced with super-advanced tree
- DA 249 – Where driveway construction necessitates tree removal, then remove and plant replacement on frontage

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Designing for Amenity

a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.

b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.

c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.

Comment:

The proposal has been skillfully designed to ensure that all relevant measures have been undertaken to maximise amenity for neighbouring properties. The proposal has been designed to minimise any impacts to adjoining neighbours with the second floor purposely positioned to the front to the front of the site to ensure no additional shadow impacts to 28 Pacific Street, as approved under DA2023/1367. Additionally, windows changes in our opinion do not directly overlook neighbouring properties private open space areas and relate to low use rooms, which ensures privacy is retained to neighbours and future occupants of the dwellings. In this regard, the proposed windows facing side boundaries either correlate with low use rooms or have been designed with high-sill heights and or suitable screening where appropriate to ensure there are no direct sightlines into adjoining windows on neighbouring properties.

3.4.1 Sunlight Access and Overshadowing

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

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.*

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.*

Comment:

The proposed modification retains the intent of what has been approved under DA2023/1367. The accompanying shadow diagrams DA16 to DA18 demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impacts to the existing north facing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

The proposal is acceptable for the following reasons:

- The proposal provides equitable access to light and sunshine.
- The neighbouring dwellings will retain the minimum number of hours of direct solar access to the rear private open spaces.

3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or

b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.

Comment:

As noted above, the proposal complies with the numerical standards and provides equitable solar access to adjoining open space areas.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

- a) *for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
- b) *for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- c) *for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Comment:

The proposed modification retains the intent of what has been approved under DA2023/1367 and will retain adequate sunlight to the living rooms of adjacent properties.

3.4.2 Privacy and Security

Note: Consideration of privacy are typically balanced with other considerations such as views and solar access. The degree of privacy impact is influenced by factors including the use of the spaces where overlooking occurs, the times and frequency these spaces are being used, expectations of occupants for privacy and their ability to control overlooking with screening devices.

Relevant DCP objectives to satisfy in relation to this part include the following:

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.*

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

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal has been designed to ensure there are minimal impacts on the privacy and security of adjoining properties or for the occupants of the dwelling. The proposal provides adequate space and view lines for surveillance and privacy to adjoining properties. It is important to acknowledge that the proposed modification retains the intent of what has been approved under DA2023/1367 positioning the second floor to the front of the site to reduce impacts to the rear neighbours, ensuring windows facing side boundaries have been designed with high-sill heights and or suitable screening where appropriate, and utilising privacy screens as required on terraces and balconies.

3.4.2.1 Window Design and Orientation

- a) *Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*

b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

Comment:

The project architect has integrated varying window designs where required for privacy reasons.

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

The proposed modification includes minor changes to the terraces and balconies approved under DA2023/1367 with the extent of the second-floor balcony to be reduced. It is my professional opinion that the proposed modification retains the intent of what has been approved under DA2023/1367 and that the proposed modifications to the proposed balconies and terraces will have no adverse impacts on neighbouring properties.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

a) Consideration must be given to the protection of acoustical privacy in the design and management of development.

b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.

c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures. See particular requirements for noise control reports for licenced premises below at paragraph g) below.

Comment:

Any noise generated from the proposed development will be associated with a 'dwelling house' and is an acceptable form of development within the R3: Medium Density Residential zoning of the site.

3.4.3 Maintenance of Views

Relevant DCP objectives to be satisfied in relation to this paragraph include the following:

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.

a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.

b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.

c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.

Comment:

It is my professional opinion that the proposed modification will not have any impact on views or view corridors. The proposed works have been reviewed under the planning principle of Tenacity Consulting vs. Warringah City Council [2004] NSWLEC 140. It is submitted that the four-step assessment for view loss is not required for this application.

3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)

Relevant objectives in relation to this part include the following:

Objective 1) To ensure the principles of ecologically sustainable development are taken into consideration within a consistent and integrated planning framework that achieves environmental, economic and social sustainability in the short, medium and long term.

Objective 2) To encourage the retention and adaptation of existing dwellings including a preference for adaptive reuse of buildings rather than total demolition. Where retention and adaption is not possible, Council encourages the use of building materials and techniques that are energy efficient, non-harmful and environmentally sustainable.

Objective 3) To minimise waste generated by development and embodied in the building materials and processes through demolition.

Objective 4) To encourage the use of recycled materials in landscape construction works.

Objective 5) To encourage the establishment of vegetable gardens and the planting of fruit trees.

Objective 6) To encourage energy efficient building design, construction and practices, that reduce energy consumption (primarily for heating and cooling), reduce the use of non-renewable fossil fuels, minimise air pollution, greenhouse gas emissions and reduce energy bills.

Objective 7) To require that residential site planning and building design optimise solar access to land and buildings.

Objective 8) To site and design development to optimise energy conservation and sustainability in accordance with BASIX legislation and encourage development to exceed requirement particularly to ensure energy efficient use of energy for internal heating and cooling.

See also Council's Administrative Guidelines

Objective 9) To site and design development to optimise energy conservation (in accordance with the energy hierarchy) and sustainability to which BASIX does not apply.

Objective 10) To ensure non-residential development involving a gross total floor area of greater than 500 sqm set and meet criteria for energy efficiency/conservation through an Energy Performance Report.

Objective 11) To ensure non-residential development complies with the Building Code of Australia energy efficiency provisions.

Comment:

A revised BASIX Certificate has been prepared and is submitted with the application which outlines the proposal's compliance with the provisions of BASIX and Energy Efficiency. The proposal will comply with the objectives and controls for Sustainability under the Manly Development Control Plan 2013.

3.6 Accessibility

Comment: Not applicable.

3.7 Stormwater Management

Relevant objectives to satisfy relation to this part include the following:

Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.

Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.

Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.

Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.

Comment:

The proposed modification is supported by a revised stormwater management plan prepared by Taylor Consulting.

3.8 Waste Management

Relevant objectives to satisfy in relation to this paragraph include the following:

Objective 1) To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).

Objective 2) Encourage environmentally protective waste management practices on construction and demolition sites which include:

- sorting of waste into appropriate receptors (source separation, reuse and recycling) and ensure appropriate storage and collection of waste and to promote quality design of waste facilities;*
- adoption of design standards that complement waste collection and management services offered by Council and private service providers;*
- building designs and demolition and construction management techniques which maximises avoidance, reuse and recycling of building materials and which will minimise disposal of waste to landfill; and*
- appropriately designed waste and recycling receptors are located so as to avoid impact upon surrounding and adjoining neighbours and enclosed in a screened off area.*

Objective 3) Encourage the ongoing minimisation and management of waste handling in the future use of premises.

Objective 4) To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.

Objective 5) To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.

Objective 6) To minimise any adverse environmental impacts associated with the storage and collection of waste.

Objective 7) To discourage illegal dumping.

Comment:

Not applicable – no change to waste management plan submitted with original DA package.

3.9 Mechanical Plant Equipment

Comment:

Not applicable.

3.10 Safety and Security

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To ensure all development are safe and secure for all residents, occupants and visitors of various ages and abilities.

Objective 2) To ensure that the design process for all development integrate principles of 'Safety in Design' to eliminate or minimise risk to safety and security.

Objective 3) To contribute to the safety and security of the public domain.

Comment:

The proposed modification has been designed with due regard to safety and security for both the occupants of the dwelling and adjoining neighbours. The proposal allows for passive surveillance of Pacific Street, while ensuring the privacy of the occupants is maintained.

Part 4: Development Controls and Development Types

4.1 Residential Development Controls

Relevant DCP objectives to be met in relation to residential development include the following:

Objective 1) To delineate by means of development control the nature and intended future of the residential areas of the former Manly Council area.

Objective 2) To provide for a variety of housing types and densities while maintaining the exiting character of residential areas of the former Manly Council area.

Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of the former Manly Council area.

Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.

Objective 5) To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.

Objective 6) To enable other land uses that are compatible with the character and amenity of the locality.

Objective 7) To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increased demand.

Comment:

The proposed development is consistent with the objectives for residential development. The development is deemed to be consistent with the desired future character of the area, will not compromise the amenity of the surrounding properties or the aesthetic qualities of the locality or the Manly precinct.

4.1.1 Dwelling Density, Dwelling Size and Subdivision

Relevant DCP objectives to be satisfied in relation to this part include:

Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.

Objective 4) To maintain the character of the locality and streetscape.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposed modification does not involved any subdivision works proposed. The proposal is consistent with the streetscape of Pacific Street and maintains the character of the locality both existing and desired for the future.

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

a) LEP Zones where numeric height controls in this DCP apply

Height controls under paragraph 4.1.2 of this plan apply to development in LEP Zones R1, R2, R3, E3 and E4. This part of the DCP does not apply to development of other lands subject to the LEP Height of Building standard identified on the LEP Height of Building Map.

See also paragraph 4.2 of this plan in relation to height controls and considerations in the LEP Business Zones.

b) Exceptions to Height

Where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must not increase the overall height of the existing building.

See also paragraph 4.1.7.2 Habitable Rooms in the Roof Structure.

Comment:

Complies – no change is proposed to the maximum building height of 9.8m approved under DA2023/1367 which is well below the 11m MLEP height allowance.

4.1.2.1 Wall Height

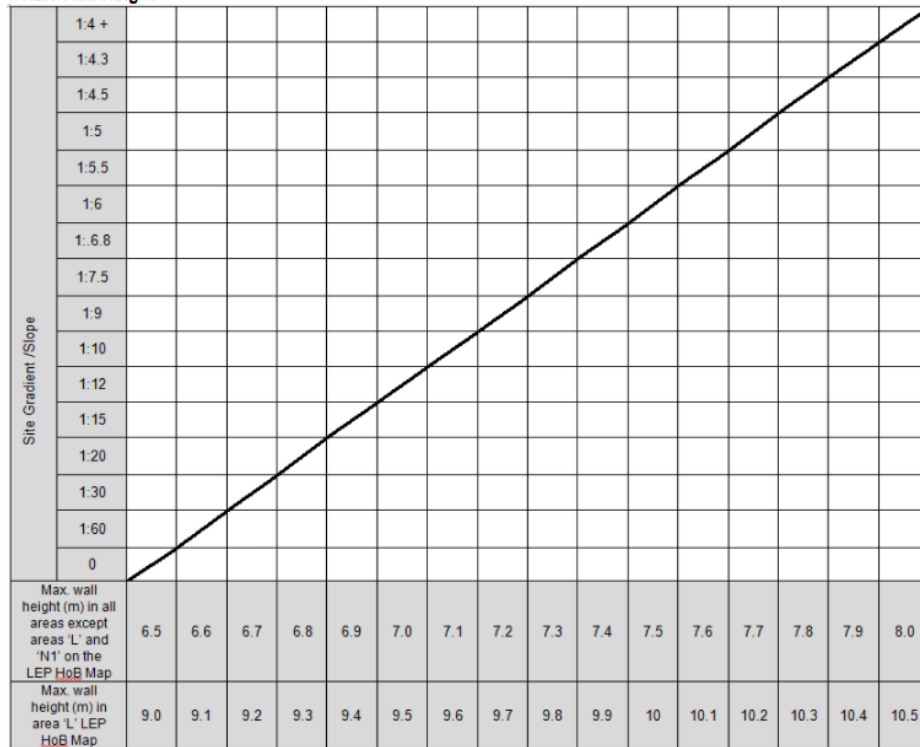
a) Within the LEP Height of Buildings development standard, the maximum external wall height is calculated based on the slope of the land under the proposed wall. Figures 26, 27 and 28 provide guidelines for determining the maximum height of external walls based on the particular slope of the land along the length of these proposed walls. The maximum wall height control will also vary from one building, elevation or part elevation to another depending on the slope of land on which the wall is sited. Within the range of maximum wall heights at Figures 26 and 28, the permitted wall height increases as the slope of the land increases up to a gradient of 1 in 4, at which point the permitted maximum wall height is capped according to Figure 26.

Figure 26 - Wall Height in relation to the LEP Height of Buildings Map

Subzones on the LEP Height of Buildings (HoB) Map *	Maximum Wall Height on flat land (no gradient)
Area 'L' on HoB Map (11m)	9m
Area 'N1' on HoB Map (13m)	12m
All other areas on HoB map	6.5m

* **Note:** Council's Wall Height control applies to the subzones within LEP Zones R1, R2, R3, E3 and E4.

4.1.2.1 Wall Height

**Comment:**

Not applicable – no changes to the approval granted under DA2023/1367.

4.1.2.2 Number of Storeys

- a) Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.
- b) Buildings on land in areas 'L' and 'N1' on the LEP Height of Building Map Buildings must not exceed 3 storeys notwithstanding the wall and roof height controls in this plan.
- c) Variation to the maximum number of storeys may be considered:
- i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and
 - ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP

Comment:

Not applicable – no changes to the approval granted under DA2023/1367.

4.1.2.3 Roof Height

- a) Pitched roof structures must be no higher than 2.5m above the actual wall height *, calculated in accordance with Figure 29.

* Note: In this paragraph 'actual wall height' means the wall height that is either existing or proposed rather than the maximum achievable wall height control in this plan.

- b) Roof parapets may extend up to 0.6m above the actual wall height where Council considers that a parapet is considered to be appropriate to the design of the development and satisfies the objectives of this DCP and the LEP. For example, a parapet roof should not result in the appearance of lift structures and the like that protrude above the roof.

Note: As the LEP definition 'Building Height' incorporates plant and lift overruns, these structures must be similarly contained and not protrude above the maximum roof height.

Comment:

The proposed modification includes minor amendments to the roof design. The proposed modification retains the intent of what has been approved under DA2023/1367 with no change to the approved roof pitch or ridge height. The proposal therefore complies with the controls under 4.1.2.3.

4.1.3 Floor Space Ratio (FSR)

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

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

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

4.1.3.1 Exceptions to FSR for Undersized Lots

See also LEP clause 4.6 Exceptions to Development Standards.

See also paragraph 3.2.5.2 Exceptions to FSR Development Standards (for the development of Heritage).

Note: On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).

a) *The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.*

Figure 30 - Extent of FSR Variation for Undersized Lots

Subzones on the LEP Lot Size (LSZ) Map	Maximum variation to FSR for undersized lots
Area 'C' on the LEP LSZ map	Calculation of FSR based on 250 sqm lot size/ site area
Area 'D' on the LEP LSZ map	Calculation of FSR based on 300 sqm lot size/ site area
Area 'I' on the LEP LSZ map	Calculation of FSR based on 500 sqm lot size/ site area
Area 'M' on the LEP LSZ map	Calculation of FSR based on 600 sqm lot size/ site area
Areas 'R', 'T' & 'U' on the LEP LSZ map	Calculation of FSR based on 750 sqm lot size/ site area

Comment:

Complies – the proposed modification retains the intent of what has been approved under DA2023/1367 as the proposed GFA is numerically the same as what was originally approved. The site is located within Area 'C' noting a site area of 215.1sqm. As a result, 4.1.3.1 allows a calculation based on 250sqm of site area. As a result, the proposal for 177.3sqm, therefore complies with the undersize lot exception with a proposed FSR of 0.7092:1. Refer to full assessment under Clause 4.4 Floor Space Ratio under MLEP2013.

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

Relevant DCP objectives to be met in relation to this part include:

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

Objective 2) To ensure and enhance local amenity by:

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

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

Objective 4) To enhance and maintain natural features by:

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

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

4.1.4.1 Street Front setbacks

a) Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.

b) Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape.

c) Where the streetscape character is predominantly single storey building at the street frontage, the street setback is to be increased for any proposed upper floor level. See also paragraph 4.1.7.1.

d) Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.

Comment:

Merit assessment – the proposal retains the existing front setback of 2.04m for the ground floor. The proposed modification includes works to extend the first-floor balcony within 1.87m of the front

boundary and to increase the front building façade to a 3.86m setback. Additionally, the second floor balcony has been further setback to 3.25m from the front boundary.

The upper-level setbacks have been dictated by the stair location to enable adequate room sizes and also the position to the front setback has been purposely designed to minimise any impacts to the access to sunlight for the eastern neighbour at 28 Pacific Street. The first-floor setback is also broadly consistent with the forward setback of 32 Pacific Street.

The proposal is considered to be consistent with the intent of the prevailing street setbacks where numerous dwellings exhibit similar front setbacks. The proposal provides a good level of visual articulation to the street and a balance to the proposed setback of the building generally.

Due to the site's constraints (small lot size and width) and existing front setback, it would be unreasonable for Council to enforce a 6m front setback, noting setbacks and the bulk and scale of the adjoining properties. The proposal is acceptable on merit and is substantially the same as what was approved under DA2023/1367. The proposed modification can be supported by Council as submitted.

4.1.4.2 Side setbacks and secondary street frontages

a) Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

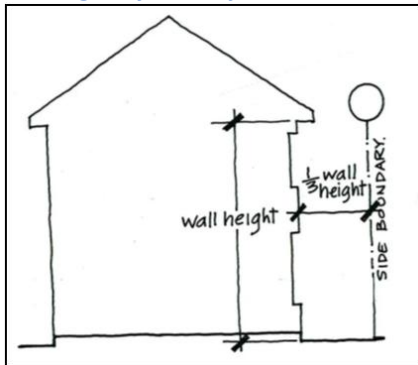


Figure 31 - Side Setback Diagram

b) Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.

c) All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries;

d) For secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.

e) Side setbacks must provide sufficient access to the side of properties to allow for property maintenance, planting of vegetation and sufficient separation from neighbouring properties. See also paragraph 4.1.4.3.b.vi. of this plan.

f) In relation to the setback at the street corner of a corner allotment the setback must consider the need to facilitate any improved traffic conditions including adequate and safe levels of visibility at the street intersection. In this regard Council may consider the need for building works including front fence to be setback at this corner of the site to provide for an unobstructed splay. The maximum dimension of this triangular shaped splay would be typically up to 3m along the length of the site boundaries either side of the site corner.

4.1.4.3 Variations to Side Setback in Residential Density Areas D3 to D9 (see paragraph 4.1.1 of this plan)

Note: The following paragraphs apply to residential density areas D3 to D9 identified in Schedule 1 - Map A of this plan. In this regard the variations in this paragraph do not apply to density areas D1 and D2.

a) Council may consider an exception to the side setback control to enable windows at 90 degrees to the boundary to provide some flexibility in the siting and design of buildings which assist in satisfying setback objectives relating to privacy subject to the following:

i) The average distance to the boundary over the length of the wall is to be no less than the required setback control. In relation to the average distance to boundary, the area of building protruding into the minimum setback must be no greater than the area of land at the side boundary that is setback more than what is required by the minimum setback line.

ii) The wall protruding into the minimum setback must not provide windows facing the side boundary.

iii) The subject side elevation must provide a window(s) at some 90 degrees to the boundary.

b) Walls located within 0.9m of any one of the side boundaries may be considered but must:

*i) contain no windows; **

ii) be constructed to one side boundary only;

*iii) limit height to 3m; **

*iv) limit length to 35 percent of the adjoining site boundary; ***

v) submit a standard of finish and materials for external surfaces which complement the external architectural finishes of adjacent properties and/or the townscape character;

vi) obtain a right-of-way to provide access for maintenance; and

vii) satisfy the objectives for setback in this plan and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.

Comment:

Merit assessment – the proposed modification includes new elements influencing the side setbacks. The following setbacks are proposed:

Ground Floor

Eastern Side Setback – 0.9m

Western Side Setback – 0.264m (unchanged)

First Floor

Eastern Side Setback – 1.01m (unchanged)

Western Side Setback – 0.438m (unchanged)

Second Floor

Eastern Side Setback – 1.127m (unchanged)

Western Side Setback – 1.37m

The proposed modification retains the intent of what has been approved under DA2023/1367. The proposal increases the side setbacks as the dwelling increases in height, noting large side setbacks for the second floor. It would be unreasonable for Council to expect full compliance noting site width of only 7.01m.

It is my opinion that the setbacks provide visual interest, retain the intent of approval DA2023/1367, provide adequate articulation and modulation and will be consistent with the character of the

streetscape. Further, the proposed setbacks do not give rise to any additional privacy or overshadowing impacts to the adjoining neighbours. On this basis, the proposed variations can be supported, as submitted.

4.1.4.4 Rear Setbacks

- a) The distance between any part of a building and the rear boundary must not be less than 8m.*
- b) Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. The character of existing natural vegetated settings is to be maintained. See also paragraph 3.3 Landscaping.*
- c) On sloping sites, particularly where new development is uphill and in sensitive foreshore locations, consideration must be given to the likely impacts of overshadowing, visual privacy and view loss.*
- d) Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.*

Comment:

Complies – the proposed modification retains the intent of what has been approved under DA2023/1367. The proposed modifications include works to extend the ground floor footprint within 8m of the rear boundary to remain compliant with the minimum requirement. No change is proposed to the setback of the first-floor rear terrace, and the extent of the roof has been reduced at the rear from what was approved DA2023/1367.

4.1.5 Open Space and Landscaping

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

Complies – the proposal retains the intent of DA2023/1367 with landscaping maximised in the rear yard through a functional open space area that integrates the dwelling, swimming pool and landscaped areas. The proposal meets the objectives of clause 4.1.5.

4.1.5.1 Minimum Residential Total Open Space Requirements

Numeric Controls

a) Open Space must be provided on site in accordance with Figure 34 - Numeric Requirements for Total Open Space, Landscaped Area and Open Space Above Ground.

<i>Residential Open Space Areas at DCP Schedule 1 – Map B</i>	<i><u>Total Open Space</u> (minimum percentage of site area)</i>	<i><u>Landscaped Area</u> (minimum percentage of <u>Total Open Space</u> Open Space)</i>	<i><u>Above Ground</u> (maximum of <u>Total Open Space</u>)</i>
<i>Area OS1</i>	<i>at least 45% of site area</i>	<i>at least 25% of open space</i>	<i>-In relation to dwelling houses: no more than</i>

Area OS2	at least 50% of site area	at least 30% of open space	25% of <u>Total Open Space</u> .
Area OS3	at least 55% of site area	at least 35% of open space	-In relation to all other land uses permitted in the Zone: no more than 40% of <u>Total Open Space</u> .
Area OS4	at least 60% of site area	at least 40% of open space	

Minimum dimensions and areas for Total Open Space

b) Total Open Space (see Dictionary meanings including landscape area, open space above ground and principal private open space) must adhere to the following minimum specifications:

- i) horizontal dimension of at least 3m in any direction; and*
- ii) a minimum unbroken area of 12sqm.*
- iii) A variation to the minimum specifications in i) and ii) above may only be considered for Above Ground Open Space where it can be demonstrated that lesser dimensions or areas will better serve to minimise amenity impacts on neighbours. A lesser areas of above ground open space may be included or calculated under the minimum requirements in the circumstances of the case. In all other cases open space that does not comply with the minimum specification is not included or calculated under the minimum requirements for total open space.*

Provisions for Total Open Space Above Ground

Note: This paragraph limits the extent of total open space which may be provided above ground level.

c) Open Space Above Ground is limited on site in accordance with Figure 34 - Numeric Requirements for Total Open Space, Landscaped Area and Open Space above Ground Level. The maximum open space above ground requirement is determined as a percentage of the Total Open Space.

Amenity Considerations

- i) Areas of total open space that are above ground are considered to have a potentially greater impact on the amenity of neighbours. Accordingly the provision of open space that is above ground is to be confined to a maximum percentage of the total open space for any development. In particular, roof terraces and large decks are discouraged and are not a preferred design option when providing open space above ground.*
- ii) All open space above ground including verandas, balconies, terraces, are not to be enclosed.*
- iii) The Total Open Space Above Ground as provided for in Figure 34 may be refused by Council where privacy and/or view loss are issues and where development does not satisfy particular considerations in the following paragraphs iv) and v).*
- iv) Roof terraces are not permitted unless designed for privacy with no direct lines of sight to adjoining private open spaces or habitable window openings both within the development site and within adjoining sites.*
- v) Council may also require methods of sound attenuation and/or acoustic treatment to be indicated in the DA to protect the acoustic amenity of neighbouring properties and the public. See paragraph 3.4.2.4 Acoustical Privacy (Noise Nuisance).*

Comment:

Not applicable – the proposal retains the intent of approval DA2023/1367.

4.1.5.2 Landscaped Area

Numeric Controls

a) Landscaped Area must be provided on site in accordance with above Figure 34 - Numeric Requirements for Total Open Space, Landscaped Area and Open Space above Ground Level. The minimum landscaped area requirement is a percentage of the actual* total open space onsite.

*Note: 'Actual' space refers here to proposed (or existing where no change proposed), rather than the minimum requirement for open space in this plan.

Minimum Dimensions and Areas

b) Minimum dimensions and areas must provide for the following:

- i) soil depth of at least 1m for all landscaped areas either in ground or above ground in raised planter beds; and
- ii) a minimum horizontal dimension of 0.5m measured from the inner side of the planter bed/box, wall or any other structure which defines the landscaped area and incorporating an appropriate drainage and irrigation regime.

c) Minimum Tree Plantings

- i) The minimum tree numbers must be in accordance with Figure 37 - Minimum Number of Native Trees Required.
- ii) The minimum tree requirement may include either existing established native trees or new native trees planted at a pot/container size to be at least 25 litres capacity and being a species selected in accordance with Schedule 4 Part B - Native Tree Selection.
- iii) The required minimum number of native trees required under this paragraph must be planted in a deep soil zone as defined in this plan's Dictionary.

Figure 37 - Minimum Number of Native Trees Required

Note: to be read in conjunction with the LEP Lot Size Map.

Site Area (sqm)	Areas in the <u>LEP Lot Size Map</u>	Minimum number of native trees listed in Schedule 4 Part B
up to 500	Area 'C' on the LEP Lot Size Map	1 <u>tree</u>
up to 500	all Areas except Area 'C' on the LEP Lot Size Map	2 trees
between 500 and 800	all Areas on the LEP Lot Size Map	3 trees
over 800	Area 'C' on the LEP Lot Size Map	3 trees
over 800	all Areas except Area 'C' on the LEP Lot Size Map	4 trees

Landscaping Driveways

d) Driveways alongside boundaries will be sufficiently setback to provide a landscaped area at least 0.5m wide between the driveway area and side boundary for the length of the driveway. Any parking hard stand area or carport associated with the driveway should also be similarly setback unless requiring a greater setback elsewhere under this plan.

Comment:

The proposal retains the intent of approval DA2023/1367. The proposal in my opinion provides adequate landscaping.

4.1.5.3 Private Open Space

Note: Private open space is in addition to the provision of communal open space for residential accommodation with more than 1 dwelling. Guidelines for the provisions of communal open space are contained in the Residential Flat Design Code referenced in this plan.

Principal Private Open Space

a) Principal private open space is to be provided in accordance with the following minimum specifications:

- i) Minimum area of principal private open space for a dwelling house is 18sqm; and*
- ii) Minimum area of principal private open space for residential accommodation with more than 1 dwelling on the site is 12sqm for each dwelling.*

Note: Principal private open space is both part of the private open space as defined in the LEP and the total open space requirement defined in the DCP and must also comply with the meanings and provisions for these spaces provided in the LEP and elsewhere in this DCP.

See also dictionary meaning of principal private open space in this DCP

Comment:

The proposed modifications enhance the existing private open space areas for the dwelling. The minimum 18sqm requirement is maintained and enhanced.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Relevant DCP objectives to be met in relation to these paragraphs include:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The proposed modification includes works to the front building façade for a new garage door servicing the two-car stacked garage approved under DA2023/1367. The proposed works will not dominate the front façade or streetscape and have been designed to blend in with natural building elements. Due to the unique nature of the site (on a small width lot) and the existing approval under DA2023/1367, the proposed garage will have negligible impact to the streetscape and is compatible with the streetscape.

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

See also paragraph 3.1.1 Streetscape.

- a) The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.*
- b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:*
 - i) garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;*
 - ii) carports must be open on both sides and at the front; and*
- c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.*

Note: *The width of any parking structure considered under this paragraph is to be measured along the elevation of the structure that fronts the street.*

- d) In relation to the provision of parking for dwelling houses, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.*

See Schedule 3 of this plan for parking and access requirements and paragraph 3.2.5.1 in relation to general exceptions to parking requirements for items of the environmental heritage listed at schedule 5 of the LEP.

Comment:

The proposal retains the intent of DA2023/1367 for a single garage with a car stacker. The proposed works will not dominate the front façade or streetscape and have been designed to blend in with natural building elements. Due to the unique nature of the site (on a small width lot) and the existing approval under DA2023/1367, the proposed garage will have negligible impact to the streetscape and is compatible with the streetscape.

4.1.6.3 Bicycle Storage

Secure bicycle storage is required for residential accommodation in accordance with Schedule 3 Part 2 Bicycles. Bicycle storage areas should be of sufficient dimensions to comply with Australian Standards.

Comment:

Complies – the proposed garage allows adequate space for storage of bicycles.

4.1.6.4 Vehicular Access

- a) All vehicles should enter and leave the site in a forward direction.*
- b) Vehicular access and parking for buildings with more than 1 dwelling is to be consolidated within one location, unless an alternative layout/design would better reflect the streetscape or the building form.*
- c) Vision of vehicles entering and leaving the site must not be impaired by structures or landscaping.*

- d) *Particular attention should be given to separating pedestrian entries and vehicular crossings for safety.*
- e) *Vehicular access will not be permitted from pedestrianised areas in Manly Town Centre.*
- f) *In relation to the development of 15-17 Suwarrow Street and 28-34 Balgowlah Road Fairlight, should vehicular access for future development be through L M Graham Reserve, a right of way will be required at the eastern most part of the site, being a 1 metre right of way required for lots 29 and 30 in Sec 5, DP 939916. The right of way should nominate Council or any person nominated by Council as the beneficiary as well as Lot 1 in DP1022202, the other lots of the site, lots 29, 30, 31 and 32 in Section 5 of DP 939916, known as 15-17 Suwarrow Street Fairlight.*

Comment:

The proposed modification retains the intent of the existing approved vehicular access under DA2023/1367.

4.1.7 First Floor and Roof Additions

- a) *First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.*
- b) *The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.*

Comment:

Complies – the proposal retains the intent of DA2023/1367 and includes a high-pitched roof consistent with that existing. The proposed modifications are consistent with the architectural quality and design of the dwelling which enhance the sustainable and usable nature of the premises for the occupants.

4.1.8 Development on Sloping Sites

Relevant DCP objectives to be met in relation to these paragraphs include:

Objective 1) To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.

Objective 2) To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.

Objective 3) To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.

Comment:

Not applicable – the site is not a sloping site.

4.1.9 Swimming Pools, Spas and Water Features

Relevant DCP objectives to be met in relation to these paragraphs include:

- 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;*
Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;
Objective 3) To integrate landscaping; and
Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

Complies – the proposed modification includes minor works to the swimming pool approved under DA2023/1367. The general siting of the swimming pool will remain the same as what was approved under DA2023/1367 with minor amendments to the shape and size of the pool and pool terrace area. The pool will maintain privacy for the occupants and will not disrupt the amenity of adjoining properties.

4.1.9.1 Height above ground

- a) Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:*
- i) would not detract from the amenity or character of the neighbourhood; and*
ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

Comment:

Complies – the proposed pool will be built in ground and will not be elevated more than 1m above natural ground level.

4.1.9.2 Location and Setbacks

See also paragraph 4.1.4.5 Foreshore Building Lines and paragraph 4.1.4.6 Setback adjacent LEP Zones RE1, RE2, E1 and E2.

- a) Swimming pools and spas must not be located within the front setback i.e. between the front boundary of the lot and the building line. Consideration of any exception to the required location must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:*
- i) does not detract from the amenity or character of the neighbourhood; and*
ii) is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.
- c) The setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1m, with the water line being at least 1.5m from the boundary.*

Comment:

Merit assessment – The proposal does not comply with the requirements of this clause in the following regard:

- The pool concourse has a nil setback to the north-western boundary and is located 0.5m and 0.44m away from the south-eastern and rear boundaries respectively.
- The water line is located 0.65m away from the north-western boundary and rear boundary.

Given the small size and dimensions of the allotment, the proposed location of the pool is reasonable in its context, and strict compliance with the requirements of this clause is not necessary in this instance. In this regard, assessment against the objectives of this clause is conducted below:

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;

The pool is considered to maintain adequate visual and acoustic privacy from the streetscape and surrounding sites.

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

The development is located such that the established character of the streetscape and the locality is maintained. The proposal does not detract from the amenity or character of the neighbourhood.

Objective 3) To integrate landscaping;

The location and size of the pool is such that there is ample space for the addition of further vegetation on site. Furthermore, the proposal wholly complies with Clause 4.1.5 Open Space and Landscaping.

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

The subject site is not located within bushfire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / 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.

4.1.9.3 Proportion of Total Open Space

Swimming pools and associated concourse areas must not comprise more than 30 percent of the total open space.

See also Dictionary meaning of Total Open Space which includes swimming pools only occupying less than 30 percent of the total open space.

Comment:

Merit assessment – the proposed swimming pool and associated concourse area is approximately 17sqm which equates to 30.34% of the total open space area on site. The minor departure from the required 30% is acceptable on merit noting the pool and associated concourse area retains the intent of what was originally approved under DA2023/1367 with minor changes to the shape and size of the pool and concourse areas. The location of the pool is substantially the same and will not result in any unacceptable privacy or amenity impacts to adjoining properties. The proposed swimming pool is acceptable on merit and can be supported by Council.

4.1.9.4 Other matters - sewer connections, pumps, structural certificates, rainwater tank and pool blankets

- a) *All swimming pools and spas must be connected to the sewerage system;*
- b) *Pumps and filters must be located, enclosed and acoustically controlled to limit noise to the appropriate standard. (See also paragraph 3.9.3 Noise from Mechanical Plant);*
- c) *A spa pool must not be located on a deck or balcony unless the structural integrity of the deck or balcony to accommodate the spa is certified by a structural engineer;*
- d) *A separate rain water tank, of adequate capacity, must be installed to recharge the pool when required; and*
- e) *Swimming pools should be covered with a secure “pool blanket”, or similar device, when not in use to minimise water loss by evaporation and to conserve energy in heated pools.*

Comment:

Complies – the proposal can comply with the above relevant requirements under 4.1.9.4.

4.1.10 Fencing

See also paragraph 3.1 Streetscapes and Townscapes and paragraph 3.2.3 Fences for Heritage.

Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.

4.1.10.1 Exceptions to maximum height of Fences

- a) *In relation to stepped fences or walls on sloping sites (see paragraph 4.1.8), the fence and/or wall height control may be averaged.*
- b) *In relation to open/ transparent fences, height may be increased up to 1.5m where at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.*
- c) *In relation to development along busy roads:*
 - i) *where a development will be subjected to significant street noise, Council may consider exceptions to the permitted fence height where the use of double glazing or thicker glazing for the residence is not available. The use of double glazing for windows in the development is the preferred means of noise reduction. See also paragraph 3.4.2.4 Acoustical Privacy.*
 - ii) *fences to the southern side of French’s Forest Road, Seaforth may achieve a maximum height of 1.5m with ‘solid’ fencing.*

Comment:

No changes to the approval granted under DA2023/1367.

Part 4.4 Other Development (all LEP Zones)

4.4.1 Demolition

Relevant DCP objectives in this plan in relation to these paragraphs include:

Objective 1)

To protect the environment during demolition, site works, and construction phases of development.

Where development involves demolition, the applicant is to demonstrate that the degree of demolition considers any existing building on the land that should be retained and appropriately adapted in order to:

- a) Meet ecologically sustainable development principles by conserving resources and energy and reducing waste from any demolition process; and*
- b) Conserve the cultural heritage of the existing building and that of the locality. An appropriate assessment of potential heritage significance must accompany any DA in relation to demolition. If the property has merit as a potential heritage item, the heritage controls and considerations in this plan apply, and*
- c) Comply with the requirements of the Northern Beaches Waste Management Policy*

Comment:

The proposal includes demolition works. Where possible the building will retain materials for reuse, otherwise as per the Waste Management Plan they will be reused or recycled off-site.

4.4.5 Earthworks (Excavation and Filling)

***Note:** Before granting development consent for earthworks, consideration must be given to the matters listed in LEP clause 6.2(3)(a)-(h).*

Relevant DCP objectives in this plan in relation to these paragraphs include:

- 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.*

See also paragraph 4.1.8 Development on Sloping Sites (Planning Principles).

See also paragraph 3.3.2 Preservation of Trees and Bushland V.

Comment:

The proposal will include minor excavation works. A geotechnical assessment has been prepared by AscentGeo and is provided with the application package.

Part 5 – Special Character Precincts, Areas and Sites

Comment:

Not applicable.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

Dwelling-houses, Semi-detached Dwellings and Secondary Dwellings

- 2 parking spaces for each dwelling house, semi-detached dwellings and secondary dwellings.*

***Note:** While no visitor parking is required for a dwelling house or semi-detached dwellings; one of the two spaces required for a Secondary Dwelling may be used as a visitor space for both the secondary and principle dwelling. See paragraph 4.1.6 for exceptions which may be considered by Council.*

Comment:

Complies – no changes to the two-car stacked parking system within the garage approval granted under DA2023/1367.

5. Matters for Consideration Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979

The following matters are to be taken into consideration when assessing an application pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

(a) The provisions of:

(i) The provision of any Environmental Planning Instrument

Comment: The proposal is permissible and consistent with the intent of the Manly Local Environmental Plan and Development Control Plan as they are reasonably applied to the proposed works.

(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

Comment: Not applicable.

(iii) Any development control plan

Comment: The proposal has been reviewed and assessed under Manly Development Control Plan.

(iiia) Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and

Comment: Not applicable.

(iv) The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

Comment: Not applicable.

(v) (repealed)

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,

Context and Setting:

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

Comment: The proposed development has been designed to the character and amenity of the locality. The proposal is of a height, bulk and scale which is consistent with recent approvals and the future character of the precinct. The proposal will have minimal residential amenity impacts in terms of views, privacy or overshadowing to the neighbouring properties.

ii. What are the potential impacts on adjacent properties in terms of:

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

Comment: These matters have been discussed in detail earlier in this report. The works have been designed such that potential impacts are minimal and within the scope of the built form controls.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

Comment: The proposal includes parking for two vehicles within a garage and adequate storage for bicycles.

Public Domain

Comment: The proposed development will have no adverse impact on the public domain.

Utilities

Comment: Existing utility services will connect to service the dwelling with electricity to be updated.

Flora and Fauna

Comment: The proposal will enhance the site with regards to the natural environment, therefore promoting fauna and flora in the area.

Waste Collection

Comment: Normal domestic waste collection applies to the existing dwelling house.

Natural hazards

Comment: The site is not identified within any natural hazard maps within MLEP2013.

Economic Impact in the locality

Comment: The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed works.

Site Design and Internal Design

i) Is the development design sensitive to environmental considerations and site attributes including:

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*

- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

Comment: These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the general principles, desired future character and built form controls.

ii) How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

Comment: The proposed development can comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) What would be the impacts of construction activities in terms of:

- *The environmental planning issues listed above*
- *Site safety*

Comment: The proposal will employ normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

Comment: The site is located in an established residential area. The locality has a variety of property types and sizes. The existing surrounding development comprises a mix of two and four storey dwelling houses. The adjacent development does not impose any unusual or impossible development constraints. The proposed development will not cause unmanageable levels of transport demand with no change of use to the existing dwelling proposed.

(d) Any submissions received in accordance with this act or regulations

Comment: No submissions are available at this time.

(e) The public interest

Comment: The proposed works are permissible and consistent with the intent of MLEP2013 and MDCP controls as they are reasonably applied to the proposed works. The development would not be contrary to the public interest.

In our opinion, the development satisfies the planning regime applicable to development on this particular site having regards to the considerations arising from its context.

The proposal is acceptable when assessed against the heads of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979* (as amended), and is appropriate for the granting of consent and accordingly, is in the public interest.

6. Summary and Conclusion

It is considered that the proposal is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The impacts of the modified development are generally consistent with the approved development in DA2023/1367.
- The merits of the application have been assessed in accordance with the provisions of the relevant requirements of WLEP 2011 and the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended). The impacts of the development do not warrant amendment to the subject proposal or justify refusal. Where a variation is proposed, adequate justification documentation has been provided to support the application.
- The nature of the development is appropriate having regard to the area of the site, its geographical location, topography, constraints and adjoining land uses.

Accordingly, the Section 4.55 (2) Modification application to DA2023/1367 approved for alterations and additions to a dwelling house and associated works at 30 Pacific Street, Manly, is acceptable from environmental, social, and planning perspectives and approval should therefore be granted by Council.