

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0003
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot B DP 382992, 199 - 205 Pittwater Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2022/0193 granted for Alterations and additions to shop top housing
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes - Zone R1 General Residential Yes - Zone E1 Local Centre
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Manly Central Pty Ltd
Applicant:	Marina Afonso Maia Goncalves

Application Lodged:	30/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	08/02/2024 to 22/02/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification works to DA2022/0193 comprise of the following:

- Amalgamation of three apartments Nos. 2, 3 and 4 into two apartments with a reduction in the total number of residential apartments from 7 to 6;
- Deletion of car stackers and conversion of this area into parking spaces;
- Relocation of residential and commercial waste areas and conversion of this area into parking spaces – resulting in a reduction of carparking spaces from 10 to 8;
- Reduction in GFA in retail No.1;
- Reduction in area of the commercial/retail services area;
- Provide 2 additional motorcycle parking spaces; and

- Rearrangement of services plant area-terrace of apartment No.1.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Manly Development Control Plan - 4.2.8.5 Carparking, Vehicular Access and Loading Controls

Manly Development Control Plan - 4.2.8.9 Signage

Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot B DP 382992 , 199 - 205 Pittwater Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) corner allotment located on the western side of Pittwater Road and northern side of Golf Parade. The site is irregular in shape with a primary frontage of 19.98m and 8.485m along Pittwater Road and a secondary frontage of 38.175m along Golf Parade. The site has a surveyed area of 684.6m². The site is located within the E1 Local Centre and R1 General Residential zone from Manly Local Environmental Plan 2013 and accommodates a two storey retail and residential building, and two storey loft apartment building currently on the site. The proposed development is located

in the E1 Local Centre zone.

The site is generally flat with no significant changes in topography. There is no vegetation currently on the site and there are no details of any threatened species.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential flat buildings, dwelling houses, semi-detached dwellings, and commercial premises. The subject site is located in Pittwater Road Conservation Area.

Map:



SITE HISTORY

The land has been used for residential / commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA0382/1997

Development Application for Refurbishment of Existing Commercial Premises, Reinstatement of the Former Three Dwellings Over and Conversion of the Warehouse into Three Flats.

Approved on 15 June 1999.

DA0382/1997

Section 96(1A) Application for Shops/Flats/Warehouse.

Approved on 19 August 2003.

PLM2021/0239

Pre-Lodgement Meeting - Written Advice Only for Multi Dwelling Housing and Shop Top Housing (Existing Use Rights) for 2A Golf Parade and 199-205 Pittwater Road, Manly.

Meeting notes dated 8 September 2021.

The meeting notes concluded the following: *A review of the proposed development based on the specific issues raised in the pre-lodgement application has been carried out and you are advised that, given the characterisation of multi-dwelling housing by Commissioner Brown in Mount Annan 88 Pty Ltd v Camden Council [2016] NSWLEC 1072, it could be considered that the existing 'flats' may be regarded as multi-dwelling housing and therefore may benefit from existing use rights on that portion of land zoned B1 Neighbourhood Centre. The construction of multi-dwelling housing on each of the lots is not objected to subject to the question of existing use rights being fully demonstrated in a development Application.*

DA2022/0193

Development Application for Alterations and additions to shop top housing.
Approved on 5 October 2022 by Northern Beaches Local Planning Panel.

APPLICATION HISTORY

Following the preliminary assessment of the application, Council's Waste Officer requested additional information in relation to the proposed waste storage area for the residential bins, and the aisle widths between rows of bins. Amended plans were subsequently submitted which switched the location of the commercial waste storage, and residential waste storage. The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2022/0193, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:

Section 4.55(1A) - Other Modifications	Comments
	• The proposal as modified is considered to be of minimal environmental impact as the proposal results in the reduction of from 7 residential units to 6 residential units. • Furthermore, the proposal results in the deletion of the car stacker to conventional parking spaces, that is considered to be of reduced environmental impact. • Overall, it is considered that the proposal as modified is of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0193 for the following reasons: The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0193.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested from Council's Waste Officer in relation to the proposed waste storage area for the residential bins, and the aisle widths between rows of bins. Amended plans were subsequently submitted which switched the location of the commercial waste storage, and residential waste storage. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 08/02/2024 to 22/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some

Internal Referral Body	Comments
	requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Contaminated Lands)	General Comments This application is seeking consent for modification to DA2022/0193 - Alterations and Additions to Shop Top Housing. Minor modifications have been proposed that do not alter the Contaminated Lands referral comments and conditions for DA2022/0193 therefore the original conditions provided apply. Environmental Health recommends approval without additional conditions.
Environmental Health (Industrial)	General Comments This application is seeking consent for modifications to consent DA2022/0193. Summary of modifications include: Reduction in the number of apartments from 7 to 6, relocation of the residential and commercial waste storage area and conversion to parking; replacement of stacker parking with conventional parking spaces, provision of two additional motorcycle parking spaces, reduction in commercial Gross Floor Area. The modifications do not present concerns in relation to noise generation and no further assessment is required. Environmental Health recommend approval without conditions.
NECC (Development Engineering)	I have reviewed the Statement of Modification and associated documents and have no objections to the proposed development subject to the retention of the existing engineering conditions of consent.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site is located in C1 - Pittwater Road Conservation Area and within the vicinity of two heritage items: Item I 210 - Commercial building - 210–214 Pittwater Road, Manly Item I211 - Group of commercial buildings - 216–218 Pittwater Road, Manly
	Details of heritage items affected
	Details of the heritage items and the conservation area, as contained within the Manly Heritage Inventory are:

Internal Referral Body	Comments
	C1 - Pittwater Road Conservation Area <u>Statement of Significance:</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively. <u>Physical Description:</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed seperately. Adjacent streets generally comprise a consistent pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop. Item I 210 - Commercial building <u>Statement of Significance:</u> A group of shops with upper floor residential apartments constructed as one building. Constructed in a Late Victorian style. Major significance as a unique example of style of architecture with commercial function at this date withing Municipality. <u>Physical Description:</u> c.1890 two storey commercial building of brick with iron roof. Originally two shops with dwelling above - shopfronts intact. Additional two storey brick building to north also has original shopfront. The addition has been constructed to match the original building at 1st floor level. First floor French doors now open onto awning. Evidence of original balcony extant. Possible original hip roof now only extant at southern end. Southern section has central chimney. Item I211 - Group of commercial buildings <u>Statement of Significance:</u> An intact example of late 19th century retail architecture which is unusual within local area. 216,218,218A Pittwater Rd <u>Physical Description:</u> Two storey brick building(s) with retail outlets at ground floor level. Southern shop front generally intact. Southern section: significant elements include dormer windows, gabled iron roof, shop fronts. Northern section: original doorway with 3 course header arch over and 2 course arch over first floor window above. There is evidence of original tuck pointing to both buildings. The awning is not

Internal Referral Body	Comments
	original.
	Other relevant heritage listings
	SEPP (Biodiversity and Conservation) 2021
	Australian Heritage Register
	NSW State Heritage Register
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	Consideration of Application
	The proposal seeks consent to modify the consent for DA2022/0193, including internal changes and reconfigurations to the parking area. It is noted that the HIS (dated 29 August 2022) submitted with this application is the same report that was submitted as a supplementary report to address heritage concerns for DA2022/0193 and has not been updated for this application. It is also noted that, Condition 21 - Continuous Awning of DA2022/0193 is still an outstanding heritage concern in this application. The proposed individual awnings design on the primary facade facing Pittwater Road (cnr Golf Parade) is considered to be inconsistent with the character of the existing streetscape and the Pittwater Road Heritage Conservation Area and a continuous awning is required to ensure that this building once again creates a positive contribution to the conservation area. Heritage also require the details of the proposed signage for the retail premises, including the location, size and colour scheme, to ensure the proposed works are compatible with the significance of the HCA. Therefore, no objections are raised on heritage grounds, subject to the retention of Condition 21 of Consent DA2022/0193 and imposition of a condition requiring the details of the proposed signage. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes but not updated for this application.

Internal Referral Body	Comments
Traffic Engineer	Proposal description: Modification of Development Consent DA2022/0193 granted for Alterations and additions to shop top housing. The proposal is for some alterations and additions to the approved site, considering the conditions of consent No. 28(a) and No. 57 of the Notice of Determination for DA2022/0193 dated 05/10/2022. S4.55 Modification, reference 21455, prepared by ttp transport planning dated 23 November 2023, Plans (Master Set), Revision 05, prepared by CHROFI Architect dated 14/12/2023 and the Statement of Modifications and Supplementary Environmental Effects, prepared by Colco Consulting Pty Ltd, dated 22 December 2023 have been reviewed by the Traffic team. Traffic team notes: - The modified plans have slightly decreased the number of residential apartment units from 7 to 6 apartments and increased the retail area from the original proposal of 288m² up to 292m². - A modified off-street carparking arrangement has been submitted to Council, which caters for 8 off-street parking spaces (including 2x2 tandem spaces) with the removal of the previously approved mechanical car stackers. The parking required under the DCP for the development is: 6 x units @ 1.0 space per dwelling = 6 spaces 6 x 0.16 visitor spaces per dwelling = 0.96 space (rounded up to 1) 292 sqm x 1 space per 40 sqm = 7.3 spaces (rounded up to 8) total parking required = 15 spaces - The modified plans propose 8 parking spaces in the carpark. The parking spaces however have not been labelled as resident/visitor/retail parking spaces. Labelled plans are conditioned to be submitted for the parking area. The allocation should allow one car parking space to be allocated to each apartment with each of the tandem pairs allocated to the same apartment. - The S4.55 Modification report states that a single parking space for the retail uses would be retained. This is consistent with condition 57 of the condition of consent and considered acceptable. - It is also reported in the S4.55 report that one (1) of the studio loft apartments would not be allocated a parking space. One (1) parking space should be considered as visitor parking space and the amended plans have 2 pairs of tandem

Internal Referral Body	Comments
	spaces. As there are 6 units and as each pair of tandem spaces will need to be allocated to the same unit, the offstreet parking provision will only provide access to parking for 4 of the units i.e 2 of the units will have no access to any offstreet parking. This is conditioned to be clarified in the report. • It should be noted that any approval for a development in this location will be subject to a condition of consent that parking permits will not be available for residents/tenants of this property to reduce reliance on car travel and promote use of active travel and public transport. • It is noted that the modification is proposing to increase the onsite bicycle parking spaces from 5 to 10 racks and to provide 2 motorcycle parking spaces compared to no motorcycle spaces in the approved development. This is to promote sustainable transport mode options for journeys to and from the site. • The plans have removed the previously proposed loading bay from inside the carpark and will propose to locate it on the site's frontage to Golf Parade. A detailed design of the proposed loading zone including the surrounding on-street parking spaces at the subject location is conditioned to be submitted to Council. A swept path plot is to be provided for a loading vehicle entering/exiting in a forward direction from the proposed loading area. Conclusion The modification application can be supported on traffic grounds. Apart from the conditions outlined above, no new conditions are proposed with all previously imposed conditions in DA2022/0193 to remain in place.
Waste Officer	Waste Management Assessment - Amended Plans (submitted 11/3/24) Supported - subject to conditions. Waste Management Assessment Unsupported - The proposal is unacceptable. Specifically: The proposal does not meet the requirements of Council's Waste Management Guidelines. The Waste Storage Area will be provided with shared waste and recycling containers and a Wheel In Wheel Out service by Council. Council will provide 6 x 240 litre bins for residential waste storage. The residential bin room does not comply with Council's waste management guidelines, specifically,

Internal Referral Body	Comments
	Chapter 4 Clause 4.6 - the pathway and access between the Waste Storage Area and property boundary must be a maximum distance of 6.5m. Also, The aisle width between the rows of bins should be a minimum of 1 metre to allow for individual bins to be pulled out for servicing without having to move other bins, as all commodities (ie garbage, paper and mixed containers) are not serviced at the same time.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

In accordance with the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*, the application of the policy is outlined under Clause 4 Application of Policy:

- (1) *This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if—*
 - (a) *the development consists of any of the following—*
 - (i) *the erection of a new building,*
 - (ii) *the substantial redevelopment or the substantial refurbishment of an existing building,*
 - (iii) *the conversion of an existing building, and*
 - (b) *the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
 - (c) *the building concerned contains at least 4 or more dwellings.*
- (2) *If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.*
- (3) *To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia.*
- (4) *Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house, co-living housing or a serviced apartment to which that plan applies.*

Comment

The proposal relates to the alterations and additions to an existing shop top housing development that is 2 storeys. Therefore, in this instance the application of the *State Environmental Planning Policy No*

65—*Design Quality of Residential Apartment Development* is not applicable.

Furthermore, as per Section 2 of Schedule 7A Savings and transition provisions of State Environmental Planning Policy (Housing), the following is applicable:

(da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date

Therefore, whilst the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* is repealed, the *State Environmental Planning Policy (Housing) 2021* does not apply as a result of the general savings provisions.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1272545M_02 dated 09 January 2024).

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

The site is located within land identified as "Coastal Environment Area". As such, the proposal as

modified is not likely to cause an adverse impact on items listed under Clause 2.10(1)(a-g) inclusive.

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

Comment:

The proposal has been designed, sited, and managed to avoid an adverse impact to Clause 2.10(1)(a-g) inclusive.

Division 5 General

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

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

Comment:

The proposal as modified is not likely to cause increased risk of coastal hazards on the land or other land due to the significant set back from the coastal zone.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	unaltered	unaltered	-	N/A
Floor Space Ratio	FSR: 1:1 (684.6m ²)	FSR: 1.02:1 (696.19m ²)	unaltered	-	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 684.6m ²	Requirement	Approved	Proposed	Complies
4.2.8.1 Height	8.5m	unaltered	unaltered	N/A
4.2.8.2 Setbacks	Primary Frontage (East): Established Building Line	Primary Frontage: Nil	unaltered	N/A
	Secondary Frontage (South): Established Building Line	Secondary Frontage: Nil	unaltered	N/A
	Side Setback (North): Nil	Side Setback (North): unaltered	unaltered	N/A
	Side Setback (West): 1/3 wall height	Side Setback (West): unaltered	unaltered	N/A
4.2.8.3 Landscaping	Private Open Space: 20m ² per dwelling	Communal Private Open Space: 14.11m ² Unit 1: 7.21m ² Unit 4: 14.26m ² Total: 35.58m ²	Communal Private Open Space: 30.6m ² Unit 3: 7.21m ² Unit 1: 25.48m ² Total: 63.29m ²	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	Yes	Yes
4.2.8.3 Landscaping	Yes	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.9 Signage	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5 Special Character Areas and Sites	Yes	Yes
5.1 Manly Town Centre Heritage Conservation Area and The Corso	Yes	Yes
5.1.1 General Character	Yes	Yes

Detailed Assessment

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

The proposal as modified presents 8 parking spaces, resulting in the reduction of 2 parking spaces, and subsequent deletion of the proposed car stackers.

Under Schedule 3 of Manly Development Control Plan 2013, the requirements for Shop Top Housing and Retail Premises are as follows:

Shop Top Housing

In other LEP Business Zoned land (i.e. other than Manly Town Centre)

- 1 resident parking space for each dwelling (irrespective of number of bedrooms),
- 0.16 visitor parking space for each dwelling.

Retail Premises

- 1 parking space for every 40sqm of gross floor area

The parking required under the Manly Development Control Plan 2013 for the development as modified is:

- 6 x units @ 1.0 space per dwelling = 6 spaces
- 6 x 0.16 visitor spaces per dwelling = 0.96 space (rounded up to 1)
- 292 sqm x 1 space per 40 sqm = 7.3 spaces (rounded up to 8)
- Total parking required = 15 spaces

Therefore, the proposal presents a shortfall of 7 parking spaces, that is consistent with the shortfall for the Development Consent.

A detailed assessment has been undertaken by Council's Traffic Engineer under Internal Referrals contained within this report. In summary, the reduction in car parking spaces from 10 to 8 is supportable by Council's Traffic Engineer, as the proposal results in the reduction of 7 residential units to 6 residential units, thereby reducing the number of parking spaces required.

A merit assessment was conducted under DA2022/0193, and therefore no further assessment is required as the existing parking space shortfall is retained, and is supportable by Council's Traffic

Engineer.

4.2.8.5 Carparking, Vehicular Access and Loading Controls

Refer to Clause 4.2.4 Carparking, Vehicular Access and Loading Controls of Manly Development Control Plan 2013 contained within this report for a detailed assessment.

4.2.8.9 Signage

A detailed assessment of the proposed signage has been conducted under Clause 4.4.3 Signage of Manly Development Control Plan 2013 contained within this report.

4.4.3 Signage

A detail assessment of the proposed signage was conducted under DA2022/0193. Under this application, there are no proposed changes to the signage.

As such, a suitable condition was included under DA2022/0193, including Condition 4 as follows:

Retail Tenancy Signage

The signage for the retail tenancies are to be in accordance with the size, style, and details as depicted in the Signage (A-DA-205) of the Plans - Master Set dated 22 July 2022 by Chrofi Architects as detailed in Condition 1.

Reason: Control of signage.

Council's Heritage Advisor, has advised that the details of the proposed signage is to be reviewed to ensure the proposed signage is consistent with the Heritage Conservation Area. As such, a condition has been recommended to ensure the signage is submitted to Council's Heritage Advisor for approval prior to the issue of the Construction Certificate.

Therefore, with the retention of Condition 4, and addition of the recommended condition from Council's Heritage Advisor, the signage will demonstrate compliance with Clause 4.4.3 Signage of Manly Development Control Plan 2013.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

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

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

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0003 for Modification of Development Consent DA2022/0193 granted for Alterations and additions to shop top housing on land at Lot B DP 382992,199 - 205 Pittwater Road, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-403303	The date of this notice of determination	Modification of Development Consent DA2022/0193 granted for Alterations and additions to shop top housing

		Add Condition 1A - Modification of Consent - Approved Plans and supporting documentation Add Condition 2A - Compliance with Other Department, Authority or Service Requirements Add Condition 11A - Amendments to the approved plans Add Condition 27A - Signage details Modify Condition 28 - Waste and Recycling Requirements Modify Condition 43 - Waste/Recycling Requirements (Waste Plan Submitted) Delete Condition 47 - Mechanical Servicing of car stackers Modify Condition 50 - Fire Safety Matters Modify Condition 51 - Waste and Recycling Facilities Certificate of Compliance Modify Condition 52 - Waste/Recycling Compliance Documentation Modify Condition 56 - Tandem and Stacked Parking Space Modify Condition 57 - Allocation of Spaces
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Modified conditions

A. Add Condition 1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A-DA-003	03	Site Plan	Chrofi Architects	10 January 2024
A-DA-101	06	Ground Floor Plan	Chrofi Architects	6 March 2024
A-DA-102	05	First Floor Plan	Chrofi Architects	14 December 2023
A-DA-201	05	Elevations - Sheet 1	Chrofi Architects	14 December 2023
A-DA-202	05	Elevations - Sheet 2	Chrofi Architects	14 December 2023
A-DA-203	05	Elevations - Sheet 3	Chrofi Architects	14 December 2023
A-DA-204	05	Elevations - Sheet 4	Chrofi Architects	14 December 2023
A-DA-301	05	Sections - Sheet 1	Chrofi Architects	14 December 2023
A-DA-302	05	Sections - Sheet 2	Chrofi Architects	14 December 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1272545M_02	Gradwell Consulting	09 January 2024
NatHERS Certificate	0007016470	Gradwell Consulting	09 January 2024
Traffic Report	21455	The Transport Planning Partnership	23 November 2023
Waste Management Report	1.1	MRA Consulting Group (MRA)	6 March 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Transport for New South Wales	Referral Response - TfNSW	20 February 2024

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

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

C. Add Condition 11A - Amendments to the approved plans to read as follows:

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

- The entry door to Unit 1, Unit 2, and Unit 3 on the First Floor shall be clearly shown on the plans.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

D. Add Condition 27A - Signage details to read as follows:

The details of the proposed signage for the retail premises, including the location, size and colour scheme are to be submitted to the Council's Heritage Advisor for written approval prior to the issue of the Construction Certificate.

Reason: To ensure the proposed works are compatible with the significance of the HCA.

E. Modify Condition 28 - Waste and Recycling Requirements to read as follows:

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

F. Modify Condition 43 - Waste/Recycling Requirements (Waste Plan Submitted) to read as follows:

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated 6 March 2024.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

G. Delete Condition 47 - Mechanical Servicing of car stackers to read as follows:

DELETED.

H. Modify Condition 50 - Fire Safety Matters to read as follows:

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

I. Modify Condition 51 - Waste and Recycling Facilities Certificate of Compliance to read as follows:

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

J. Modify Condition 52 - Waste/Recycling Compliance Documentation to read as follows:

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

K. Modify Condition 56 - Tandem and Stacked Parking Spaces to read as follows:

Tandem parking spaces are to be assigned to the same residential unit.

Reason: To minimize conflicts regarding parking areas.

L. Modify Condition 57 - Allocation of Spaces to read as follows:

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

- 7 - Residential
- 1 - Retail

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure that adequate parking facilities to service the development are provided on site.

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

Signed



Stephanie Gelder, Planner

The application is determined on 15/03/2024, under the delegated authority of:



Adam Richardson, Manager Development Assessments