



DA No: DA2020/0855

Section 4.55(2)

Modification of Development Consent

***‘Demolition works, alterations and
additions to the existing dwelling
house with new pool’***

**83-85 Bower Street,
MANLY**

APRIL 2021

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1.0 INTRODUCTION

- 1.1 Reference is made to Development Approval **DA2020/0855** (the 'consent'), as modified, issued by Northern Beaches Council on 11 November 2020, to *"demolition works and construction of a dwelling house including swimming pool."*
- 1.2 The development site is No. 83 - 85 Bower Street, Manly (Lot 76 & 77 DP 8075).
- 1.3 The proposed Section 4.55(2) application seeks to make changes to the approval due to the issues confronting the construction of a new dwelling. There are a number of difficult construction issues overcome by retaining some of the existing walls of the dwelling as opposed to full demolition. There are consequential changes to the garage and parts of the living areas of the dwelling as well as the building footprint. Overall, the development remains substantially the same as that approved.
- 1.4 The applicants design team attended a pre lodgement meeting with Council officers on the 8 December 2020, the purpose of which was to discuss the construction access issues associated with the current approval and the foreshadowed amendments to be completed under S4.55 (2) of the *EP and A Act 1979*. Council officers confirmed that S4.55(2) was an appropriate pathway with regard to obtaining consent for the proposed amendments.
- 1.5 The proposed modification requires the amendment of conditions of consent relating to the approved development plans.
- 1.6 This application for modification is made pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (the 'Act') and seeks to amend the approved development, in accordance with the submitted s4.55 plan set. In our opinion the proposed changes result in *substantially the same* development and does not lead to a radical change when compared to the approved development.
- 1.7 This application is not a review of the land use. The application relates to changes to the construction method which retains certain parts of the existing dwelling/structure. The retention of some existing structure causes the new dwelling to be built within a similar envelope and footprint to the existing approval. The height, FSR, landscaping and private open space (POS) for the development does not substantially change and the general presentation and streetscape are preserved in the same manner as the original consent.
- 1.8 The amendments have been assessed and found to be, subject to conditions of consent, acceptable with regard to environmental impacts when compared to the impacts afforded by the approved development and by the planning controls/objectives.

2.0 PROPOSED AMENDMENT

- 2.0 Development Approval **DA2020/0855**, dated 11 November 2020, being for *“demolition works and construction of a dwelling house including swimming pool”*.
- 2.1 The S4.55(2) proposal seeks approval to carry out alterations and additions to the approved dwelling whereby elements of the existing house are retained below the first floor level. The total amount of the existing structure retained is now 28% as opposed to full demolition. We also note that with 28% retention of the dwelling it is not possible to lodge an application for a alterations and additions to a dwelling and accordingly a DA proposing to retain 28% would be categorised as a new dwelling just like the current amendment. Some particulars of the S4.55 proposal are provided below:
- Maintained fabric includes the existing attached garage on Montpelier Place, the ground floor bedrooms & bathrooms on the eastern side of the site. The existing pool is now retained and used as a stormwater detention tank, with landscaping over the top of the retained pool.
 - All of the existing first floor is demolished.
 - Of the 358m² of existing floor area, including the attached garage, 101m² is being retained. This equates to 28% of the existing dwellings fabric.
 - There is no change to the number of bedrooms, bathrooms or living rooms.
 - The terrace on the northern side of the ground floor is retained - accessible from the living room together with living rooms along the northern & western side of the dwelling - as per the approval.
 - The front entry to the house (from Montpelier Place) is retained on the eastern side of the house - as per the existing dwelling. The existing entry courtyard is retained and replanted.
 - The facade presents in similar form to the approved scheme – two main gables facing west into the garden, one gable over the garage facing Montpelier place and one gable form facing north over the main bedroom.
 - The external wall material of the ground floor new works remains as face brick.
 - The shape of the new swimming pool and spa is modified; location generally the same.
 - Addition of a long water feature– from the western side of the entry stairs to the edge of the spa.
 - No change to the roof, weatherboard walls or window materials as the spec remains as approved.
 - Decrease in both demolition on the site and excavation on the site.
 - Revised GFA is 406m² (an increase of 35.2m² from 370.8m² and approved FSR of 0.27:1), equating to an FSR of 0.29:1 (compliant with the MLEP development standard – 0.45:1 max).
 - The proposal remains oriented away from the eastern boundary, continuing to minimise any overlooking of No. 81 Bower St. There are no living rooms windows at first floor level where the only windows are the bathroom (over 6m from the boundary. Sills are 1.9m from the finished floor level of FF.
 - New carport to the west of the existing (and proposed retained) garage, using the existing driveway for access.
 - Use of the existing pool as a water detention tank greatly reduces the extent of excavation on site.
- 2.2 The s4.55 plans, prepared by Evans and Green, Revision A, dated March 2021, are submitted with the application and referred to as *“the s4.55 plan set”*.

- 2.3 The consent conditions under DA2020/0855 referencing the architectural plans, landscape plans and other reports submitted as part of the s4.55 application are to be amended to reflect the s4.55 documentation. Amended consultant reports have been provided supporting the proposed plan amendments.
- 2.4 Extracts of the s4.55 plan set (including floor plans showing the outline of the existing house dotted in blue, outline of the approved DA shown dotted in green and outline of the proposed dwelling dotted in black – Dwg Nos. S4.55.04 – s4.55-06) are below.

NB: the floor plans of the primary living areas are not reproduced in this Statement as this SEE will be publicly available for inspection.

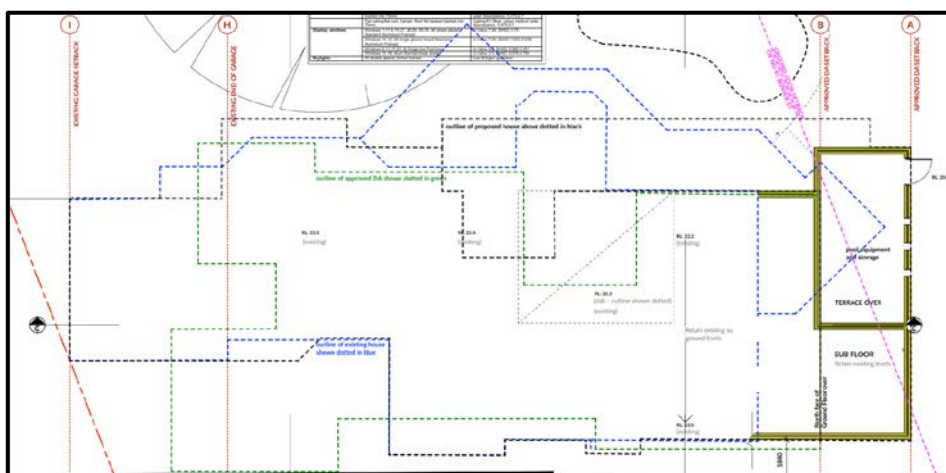


Figure 1: Extract of lower ground floor level, showing the three building envelopes – existing, approved and proposed (s4.55 plan set, dated March 2021)

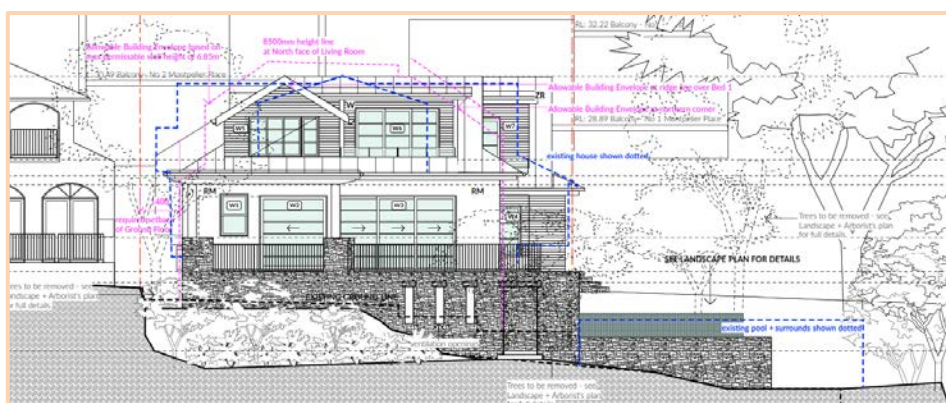


Figure 3a: Northern Elevation – as approved

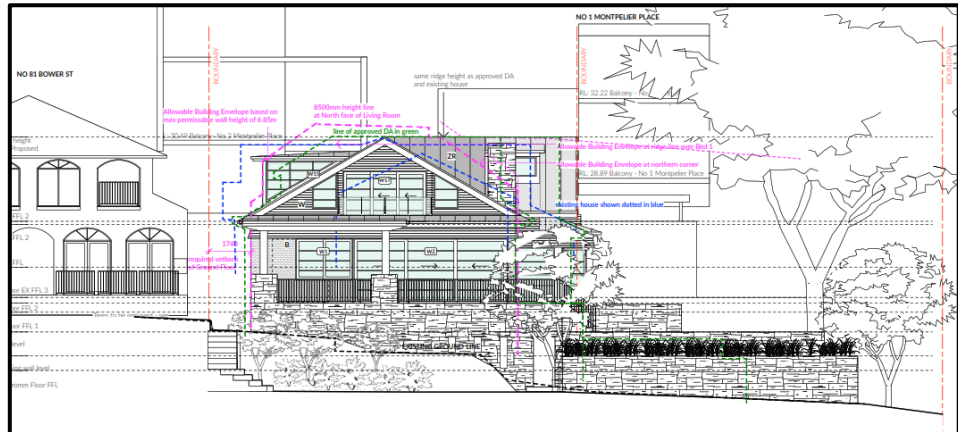


Figure 3b: Northern Elevation (s4.55 plan set, dated March 2021)

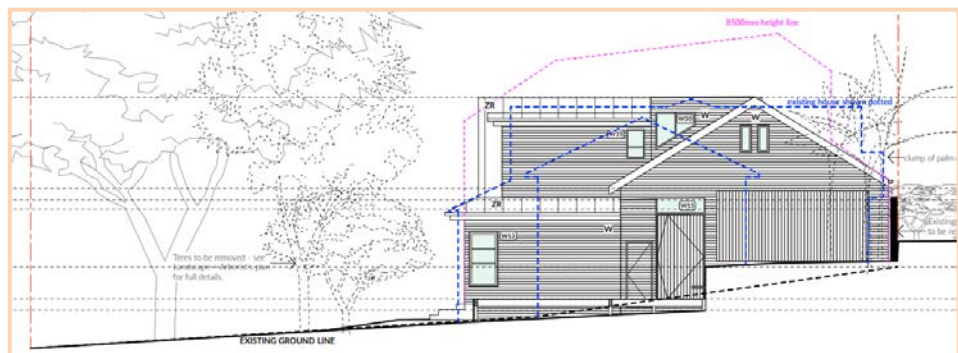


Figure 4a: Southern Elevation – as approved

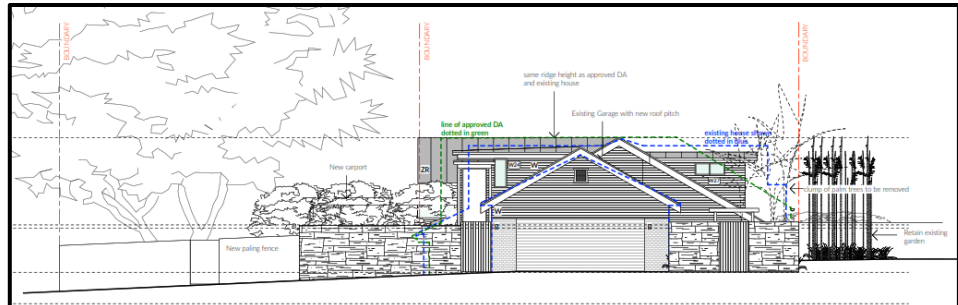


Figure 4b: Southern Elevation (s4.55 plan set, dated March 2021)

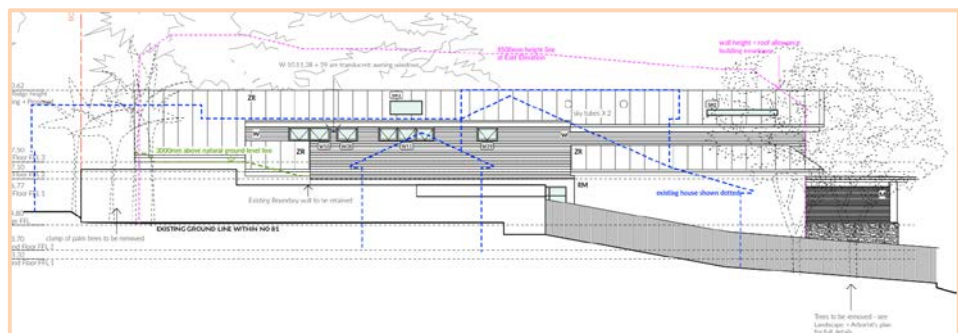


Figure 5a: Eastern Elevation – as approved

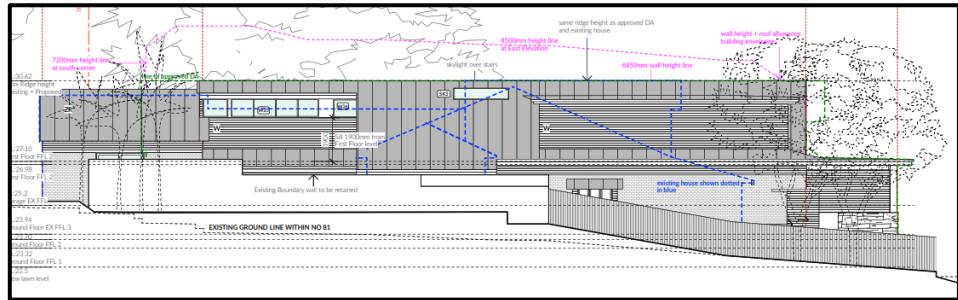


Figure 5b: Eastern Elevation (s4.55 plan set, dated March 2021)

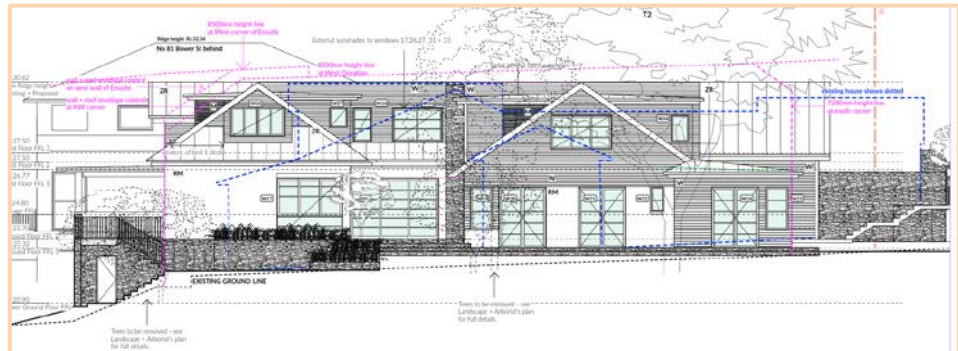


Figure 6a: Western Elevation – as approved

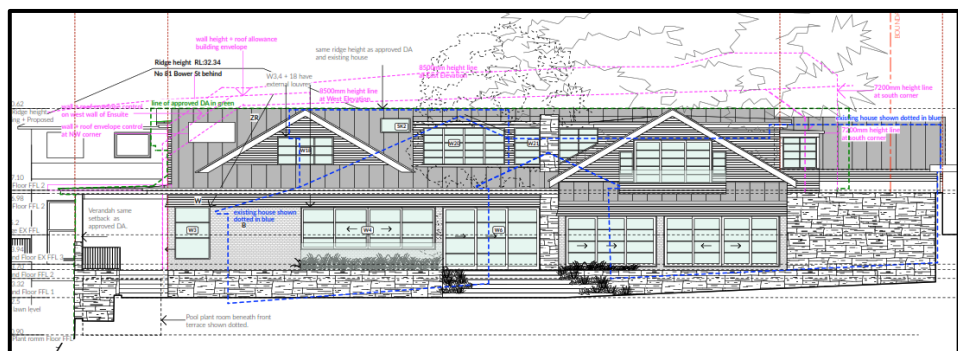


Figure 6b: Western Elevation (s4.55 plan set, dated March 2021)

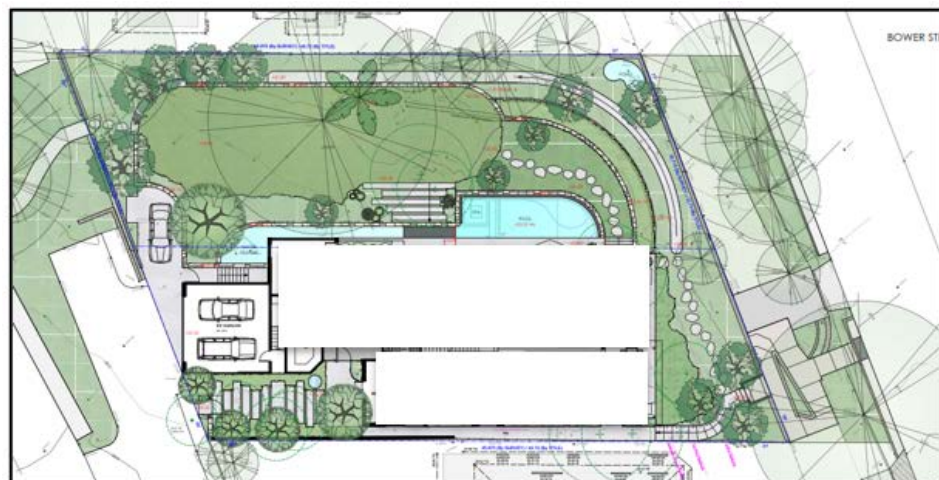


Figure 7: Extract of Landscape Master Plan (s4.55 plan set, dated February 2021)

3.0 ASSESSMENT – ‘SUBSTANTIALLY THE SAME’

- 3.1 The application is made pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), which states the following:

Section 4.55(2):

(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.

- 3.2 The requirement for an amended development application to be ‘*substantially the same*’ as the original development arises from the requirements of s.4.55 of the EP&A Act 1979.
- 3.3 Application of the phrase ‘*substantially the same*’ has been the subject of much legal debate. Council’s vary in the application of this clause based on a degree of subjectivity given there are no numerical standards against which to test the amendment.
- 3.4 In respect to the subject S4.55 application there is no change to the proposed land use which is maintained as a dwelling house and swimming pool development comprising the same number of bedrooms, bathrooms and living areas and parking spaces. There are minor changes to the GFA and consequential changes to the landscape areas with generally the same building footprint. The modified proposal is therefore *substantially the same* from a land use perspective.
- 3.5 The nature of S4.55 of the EP & A Act 1979 assumes that there is likely to be some change between an originally proposed (and approved) development and a modified one. The decision of *North Sydney Council – v – Michael Standley & Associates Pty Ltd*, (97 LGERA 433, 12 May 1998, Mason P), added to the understanding of the appropriateness of permitting a modification as follows:
- “Parliament has therefore made it plain that a consent is not set in concrete – it has chosen to facilitate the modifications of consents, conscious that such modifications may involve beneficial cost savings and / or improvements to amenity.”*
- 3.6 In contemplating consent for a modification, it is the degree of change which determines whether the consent authority has the power to approve a modification adopting the threshold test under Section 4.55(2)(a) of the EP&A Act 1979.

- 3.7 The word to *modify* means ‘to alter without radical transformation’ as confirmed in *Sydney City Council v Ilene Pty Ltd* (1984) 3 NSWLR 414. In our opinion the changes are substantially the same. The changes are not deemed to be *radical* as the footprint and building envelope are *substantially the same*. The overall height and general location of the habitable rooms remain unchanged. Parking is now provided within the existing garage at the front of the site. The eastern external walls and associated rooms are retained. The height, FSR and landscaping of the site are compliant. On this basis, the Council is well within its power to determine the application under S4.55(2) and this accords with Councils pre S4.55 advice.
- 3.8 The main consideration under Section 4.55 is what constitutes “the same development” and what are the parameters defining “substantially”. In the case of *Vacik Pty Limited and Penrith Council* (unreported 24 February 1992, Stein J), the Court held that substantially means “essentially or materially or having the same essence” and that the substance of determining these matters rests with a comparative analysis between the consent being varied and the modification and this approach is supported by the decision of Bignold J in *Moto Projects (No 2) Pty Ltd and North Sydney Council* (NSWLEC 280, Appeal 10741A of 1997, 17/12/99).
- 3.9 When considering material impact, it is our opinion that the proposed modifications are not of such significance to warrant a new application. By way of assistance, the Macquarie Concise Dictionary defines material to mean, amongst other things: *of such significance to be likely to influence the determination of a cause*.
- 3.10 By way of relevant examples of the Court:
- In the matter of *Wang v Woollahra MC* [2006] NSWLEC 106, the Court approved the addition of an additional storey at “lower ground floor level (containing pool, sauna, pool plant area, ac area and bathroom” such that the approved two storey building was now a 3-storey building and still deemed the proposal to be substantially the same.
- In the matter of *258 Crows Nest Development Pty Ltd v North Sydney Council* [2006] NSWLEC 420, the Court approved an additional residential unit on the approved roof terrace level and still deemed the proposal to be substantially the same.
- In the matter of *McKirdy v Hunters Hill Council* [2005] NSWLEC 200, the Court approved a section 96 to increase a basement area by some 28%, notwithstanding it was contrary to a specific condition of consent.
- In *Tipalea Watson Pty Ltd v Ku-Ring-Gai Council* [2003] NSWLEC 253 the Commissioner confirmed that external changes to an approved building are acceptable under a Section 96 application given that external appearance is only but one aspect of a development that makes a whole entity. In that case Councils expert considered the overall external changes to result in a “significantly different architectural appearance and character” of the development offering a “different presentation” to the streetscape and neighbouring properties however the Court did not agree with this position.

- 3.11 Accordingly, Council may proceed to a merit assessment so as to satisfy s.4.55(3) of the Act given the amended development results in a development that is substantially the same as the original approval and as such the proposed changes subject of this application may be granted under section 4.55 of the *EP&A Act 1979*.

4.0 ASSESSMENT – SECTION 4.15 OF THE EP&A ACT 1979

4.1 Section 4.15 Heads of Consideration

The relevant heads of consideration under Section 4.15 of the *EP&A Act 1979* were considered as part of the assessment of the original application. This Section 4.55 application establishes that the development is the same as that approved by Council in **DA 2020/0855**.

4.15 Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and*
- (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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 4.7, or any draft planning agreement that a developer has offered to enter into under section 4.7, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (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,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

4.2 State Environmental Planning Policies

The following environmental planning policies were addressed as part of the original development assessment:

- SEPP No. 55 - Remediation of Land
- SEPP (BASIX)
- SREP (Sydney Harbour Catchment) 2005
- Manly Local Environmental Plan (MLEP) 2013

In each case the approved development was found to be acceptable or conditions of consent applied to ensure compliance during construction and occupation of the site. A new BASIX Certificate is submitted with this application.

A review of the relevant EPI provisions is addressed below.

4.3 Manly Local Environmental Plan 2013 (MLEP 2013)

MLEP 2013 is the relevant local environmental planning instrument applicable to the subject site. The following identifies the specific aims and the assessment of the application against the objectives and other relevant provisions.

Zoning and Permissibility

The site is zoned part R2 Low Density and part E3 Environmental Management Residential under Manly LEP 2013 (MLEP). There is no change to the zoning and permissibility of the development on the subject site.

The development, as amended, satisfies the R2 zone objectives given that:

- The landuse, being a dwelling and swimming pool is permissible in both zones;
- The environmental values of this coastal site are not adversely impacted by the amended proposal, including the location of the additional floor area as it remains within a similar footprint and building envelope to the approval.
- The height of the dwelling remains compliant with the MLEP;
- The FSR (while increased from 0.27 to 0.29:1) remains well below the maximum permitted on the site;
- The landscaping of the site is revised as part of the amendments – remaining compliant and suitable for the E3 zoned area;
- The bulk and scale of the dwelling remains consistent with surrounding developments and therefore does not impact on the character, nature or values of the area.
- There are no significant trees to be removed as a result of the proposed amendments - other than those already approved to be removed.

Clause 4.3 Height of Buildings

The subject site has a height limit of 8.5m.

Comment: The modifications do not change the overall approved height of the dwelling. It remains compliant.

Clause 4.4 Floor Space Ratio

The MLEP FSR permitted on the subject site is 0.45:1.

Comment: The amended GFA is 406m² with a new FSR of 0.29:1. - an increase of 35.2m² from 370.8m² and approved FSR of 0.27:1. The development, as modified remains compliant.

Clause 6.5 Terrestrial Biodiversity

One large tree was approved to be removed - this remains as approved. No other trees are proposed to be removed under the S4.55 application.

Clause 6.9 Foreshore Scenic Protection Area

The development, as amended, remains acceptable as:

- There is no overshadowing of the public foreshore as a result of the proposed works;

- No particular measures are required with this application in order to protect and improve scenic qualities of the coastline;
- The development retains an acceptable relationship with the foreshore along Cabbage Tree Bay and Shelly Beach;
- There is no conflict between the occupation and domestic use of the dwelling (located on the southern side of Bower Street) and the land and water-based activities along the coastline of Cabbage Tree Bay and Shelly Beach. These areas are separated from the subject site by the properties on the northern side of Bower Street.

4.4 **Relevant Non-Statutory Development – Manly DCP 2013 (MDCP 2013)**

The following table does not address the whole development, only those relevant matters raised by the proposed modifications to the approved development.

Table 1 below is the DCP Assessment table for the proposed S4.55(2) application.

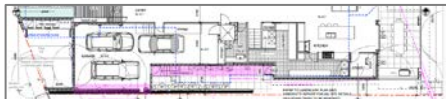

Table 1: MDCP 2013 Assessment Table

Part 3: General Principles of Development	
Control	Amended Development
<p>3.1.1.1 Complementary Design and Visual Improvement</p> <p><i>a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:</i></p> <p><i>i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;</i></p> <p><i>ii) ensure the bulk and design of development does not detract from the scenic amenity of the area when viewed from surrounding public and private land;</i></p> <p><i>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;</i></p> <p><i>iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like.</i></p> <p><i>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.;</i></p> <p><i>vi) visually improve existing streetscapes through innovative design solutions; and</i></p> <p><i>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.</i></p>	<p>The proposal satisfies each of the DCP controls listed.</p> <p>The streetscape is largely characterised by single dwellings. A variety of building heights, architectural styles and materials are evident within both the Bower Street and Montpelier Place frontages.</p> <p>The amended proposal retains the current garage footprint with limited other modifications to the street presentation. The pitched roof lines are maintained.</p> <p>The character and environmental values of the Bower Street area downslope towards Cabbage Tree Bay and Shelly Beach are not impacted by the amended proposal. The works remain on a similar building platform as the approved and current dwelling. The extent of site impact is reduced as a result of the amended proposal.</p> <p>Setbacks remain consistent with surrounding dwellings and provide suitable offsets to minimise shadows, bulk, scale and privacy impacts. Significant deep soil is provided within the front and rear setbacks as well as the western side setback areas.</p>

<p><u>Setback Principles in Low Density Areas</u></p> <p><i>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.</i></p>	
<p>3.1.1.2 Front Fences and Gates</p>	<p>The proposed front fence, pedestrian gate and driveway gate are modified due to the retention of the original garage footprint. The external materials, finishes, height and function remain the same.</p> <p>The proposed fencing remains complimentary in design and will improve the streetscape presentation to Montpelier Street.</p>
<p>3.1.1.3 Roofs and Dormer Windows</p>	<p>The roof is amended in response to the changes needed for construction. The overall height, design, functionality and aesthetic appearance are very similar between the S4.55 and the approval. The changes will minimise, as far as practically possible, view loss. These issues were assessed with the current approval and it follows that the S4.55 scheme (given its similarities with the approval) equally satisfies the relevant objectives.</p> <p>The roof area is reflective of the building footprint, as amended, and in this regard the footprint of the dwelling remains well under the maximum permissible footprint available under the planning controls.</p>
<p>3.1.1.4 Garages, Carports and Hardstand Areas</p>	<p>The existing double garage location and footprint are retained in the amended proposal. It will house 2 vehicles, not 3 vehicles - as approved. It remains a single storey, pitched roof structure, located to the rear of the dwelling (note the wide road reserve in this section of the street).</p> <p>The pitched roof above the garage continues to minimise its dominance. Material choice is appropriate for the site and remains compatible with the streetscape. A new flat roofed single carport to the west of the existing garage is proposed, accessed via the existing driveway. Overall 3 off street car parking spaces are</p>

	provided as per the approval.
3.3 Landscaping 3.3.1 Landscape Design	<p>The amount and quality of landscaping across this site is largely maintained, as approved. Minor changes have been necessary due to the retention of more of the additional building fabric including maintaining the existing pool which will be covered by new landscaped lawn. A significant proportion of the site is deep soil.</p> <p>The proposal upgrades the planting scheme as depicted in the amended Landscape Plan set prepared by Landart dated March 2021.</p> <p>There is no change to any significant onsite vegetation as a result of the amendments.</p>
3.3.2 Landscape / Tree Preservation	<p>No change. Amended landscape plans submitted with the s4.55 package.</p>
3.4 Amenity 3.4.1 Sunlight Access and Overshadowing <i>In relation to sunlight to private open space of adjacent properties:</i> <i>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</i> <i>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.</i>	<p>The proposed modifications to the footprint of the building do not result in any significant changes to the previous approval in terms of solar access.</p> <p>The amended proposal is acceptable given the overall height of the dwelling is not changed; the eastern setback at the front of the site is increased by the retention of the garage in its current location; the eastern setbacks are generally similar to the approval and will not add to the shadow impacts to any significant extent.</p> <p>The property to the east will continue to receive good access to sunlight, mid-winter, all morning with only minor changes (similar to the approval) by 3pm and later in the afternoon.</p>
3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties	<p>Given the north south orientation of the site shadow impacts are not likely to unreasonably impact on adjoining properties.</p> <p>This is not altered by the amended proposal as the footprint is generally the same as approved.</p>
3.4.2 Privacy and Security 3.4.2.1 Window Design and Orientation	<p>Windows continue to be limited along the eastern elevation with no window openings in the first floor level other than a bathroom &</p>

<p>a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.</p> <p>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.</p>	<p>hallway- these window sills are 1.9m from the First Floor finished floor. The dividing fence along the eastern boundary will screen both properties at ground level. Again, windows are limited to low traffic rooms only – the kitchen does not have a window opening facing east.</p>
3.4.2.2 Balconies and Terraces	<p>Terraces have been located to the north and west and are sufficiently separated from neighbouring properties to ensure that there are no unreasonable impacts. This is not changed by the amendments.</p>
3.4.3 Maintenance of Views	<p>View sharing was previously assessed and deemed to be acceptable leading to the original approval. The S4.55 modification remains height compliant and lies within a similar footprint and building envelope as the previous approval. The GFA of the dwelling remains quite modest for this development, considering the size of the land.</p> <p>Refer to the site plan showing the outlines of the current, approved and modified building.</p>
3.5 Sustainability	<p>A new BASIX certificate has been provided with the proposal.</p>
<p>3.5.5 Landscaping</p> <p>3.5.5.1 Considerations in Plant Selection and Landscaping Design</p>	<p>A revised Landscape Plan is submitted reflecting the outdoor changes to the development eg shape of the swimming pool and spa, the water feature, the eastern front entrance. The planting scheme is generally unchanged.</p>
3.7 Stormwater Management	<p>Minor changes required for the modified footprint.</p>
3.10.1 Safety	<p>The proposal utilises the existing access from Montpelier Place to the rear for vehicles.</p>
3.10.2 Security (Casual Surveillance)	<p>No change to the level of security and safety for the site.</p>
Part 4: Development Controls and Development Types	
4.1 Residential Development Controls	
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	<p>Continues to comply with MLEP 2013.</p>
4.1.2.1 Wall Height	<p>The overall height of the development is not altered by the amendments.</p>

	<p>Council previously dealt with a variation to the western wall height and it was approved.</p> <p>Refer to the elevation plans that show the current, approved and amended facades, height and wall heights.</p>
4.1.2.2 Number of Storeys	Complies
4.1.2.3 Roof Height	No change to the maximum approved dwelling.
4.1.3 Floor Space Ratio <i>As per LEP Clause 4.4 (0.45:1)</i>	The proposal, as amended, has a FSR of 0.29:1 and remains well below the maximum allowable for this site.
4.1.4.1 Front setbacks	<p>The amended proposal retains the existing double garage fronting Montpellier Place.</p> <p>In this case, this is considered acceptable as the road reserve along this street is wide and incorporates separate vehicle access to the rear of the site and to neighbouring properties.</p> <p>There is no change to the approved front setback to Bower Street.</p>
<p>4.1.4.2 Side setbacks and secondary street frontages</p> <p>a) <i>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.</i></p> <p>c) <i>All <u>new windows</u> from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries;</i></p> <p>e) <i>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.</i></p>	<p>The changes to the side setbacks result from the retention of the additional building fabric – garage and eastern rooms and then alignment of the kitchen to those existing rooms at ground floor level.</p>  <p><i>Approved ground floor plan</i></p>  <p><i>Amended ground floor plan</i></p> <p>The window openings of the retained ground floor rooms are screened by the dividing fence and offset to any window openings across the boundary. There is no anticipated adverse impact as a result of retaining these two bedrooms in the proposed configuration.</p> <p>At the first-floor level the master bedroom above the kitchen/living room is setback from the walls below</p>

	<p>on both the north & west elevation. Northern setback at FF level is increased from the approved scheme.</p> <p>The setback to the eastern boundary of the ensuite & robe is 2.3m with no window openings facing the boundary and therefore no privacy issues to the adjoining property.</p> <p>Bedroom 3 & 4 at first floor level of the approved plans are now located within the existing rooms retained in the amended plans. This significantly increases the setback to the eastern side boundary adjacent the front entry and garage of the amended layout as the existing entry courtyard on the east is maintained.</p> <p>Refer to s4.55 Floor plans.</p>
<p>4.1.5 Open Space and Landscaping</p> <p>4.1.5.1 Minimum residential total open space requirements</p> <p>Area OS3:</p> <ul style="list-style-type: none"> - at least 55% of the site area - at least 35% open space -In relation to dwelling houses: no more than 25% of Total Open Space. 	<p>The proposal, as amended, reduces the landscaped area marginally (less than 5%) and remains well above the minimum requirement. Refer to 4.1.5.2 below.</p> <p>The amount of open space is similar. Numerically the site provides extensive open space for the use of the residents – some formal, some informal. The development, as easily complies with the minimum requirements of the DCP.</p>
<p>4.1.5.2 Landscaped Area</p>	<p>The landscape scheme for the site is slightly amended to account for the proposed changes to the building footprint; the siting of the swimming pool; and minor modifications for the amenity and function of the open space terraces and indoor/outdoor connections of various rooms within the dwelling.</p> <p>The overall landscaped area is reduced by less than 5% and remains well above the minimum requirements of the DCP.</p> <p>Refer to the updated plans from the Landscape Architect, submitted as part of the s4.55 application.</p> <p>There are no significant changes to the planting regime proposed and approved with the original application.</p>

4.1.5.3 Private Open Space	No significant change and remains compliant.
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) 4.1.6.1 Parking design and the location of garages, carports or hardstand areas	The existing double garage is retained. This houses two vehicles, as opposed to the approved triple garage with one stacked space. One car space is in the new proposed carport. Overall no increase in the number of off street parking spaces on the site. There are no impacts of this change – it is a result of the need to change the construction method for that section of the build.
4.1.8 Development on Sloping Sites	No significant change to the proposed footprint of the development. Therefore, existing conditions of consent are valid and will continue to apply.
4.1.9 Swimming Pools, Spas and Water Features	The siting of the swimming pool and spa are slightly altered in the amended plans – the shape predominantly. The southern side of the spa also borders a water feature along the western side of the house which wraps around to the Montpelier frontage.
4.1.10 Fencing	The street is characterised by a mix of primary and secondary frontages with a variety of built forms. The approved fencing along the Montpelier Street frontage is modified to provide for the retention of the existing garage. Otherwise, the boundary fence is the same height, materials and functionality.
4.4.5 Earthworks (Excavation & Filling)	The amended development has less excavation as the existing pool is retained & reused as a stormwater detention tank. Refer to dwg no. s4.55.5 showing in blue that the only area of excavation is the north-western corner of the footprint.
Part 5: Special Character Areas and Sites	
5.4 Environmentally Sensitive Lands 5.4.1 Foreshore Scenic Protection Area	The subject site is identified as being located within the foreshore scenic protection area. The proposal, as amended, is not substantially changes and was assessed as acceptable in this case. The proposed minor amendments do not result in any direct adverse impact to natural features of the foreshore or to views across the site from Bower Street or adjoining properties.

4.5 Suitability of the site for the revised S4.55 development

It is considered that the amended proposal remains suitable for the subject site. The proposed modifications are a function of the revised construction methods, particularly on the Montpelier Place frontage and the eastern side of the site. This change results in retention of additional existing building fabric and a larger section of the existing building footprint than originally planned.

The design retains the existing double garage which opens up the Montpelier Place frontage on the eastern side. The retention of the eastern rooms creates minor flow-on changes to the kitchen and living area location of external walls and some minor reconfiguration of the some of the internal layout to allow for BCA compliance and flow between rooms. The swimming pool is reconfigured and minor modifications to the landscape scheme required as a consequence of the footprint alterations & reuse of the existing pool for water detention.

Overall, the modification does not change the approved landuse, does not substantially alter the building footprint, height, FSR or building envelope. There is no change in the number of onsite parking spaces and no change to the number of bedrooms or living areas.

An assessment of the changes along the eastern side of the dwelling reveals that the redesign has adequately considered any anticipated impacts on the eastern neighbour.

The urban design solution is substantially the same development as that approved without undue adverse site amenity impacts or impacts on neighbouring properties. There is no significant change to the streetscape, including Montpelier Place as the double garage, in that location, with that general design and external appearance is existing and generally acceptable. It is anticipated that the changes will be barely discernible and inconsequential once constructed.

4.6 Any submissions made in accordance with this act or the regulations

Council is responsible for the referral of this S.4.55 application to relevant Government bodies. As a s4.55(2) the application will be publicly notified.

4.7 Public Interest

The relevant issues have been addressed with regard to the public interest as reflected in the relevant planning policies and codes, as they apply to the proposed amendment. The modification outlined above does not change the approved development comprising predominantly a new dwelling and swimming pool albeit with retention of 28% of the existing fabric. The proposal, as amended, is unlikely to result in any adverse impact to the public interest in the circumstance of the case.

5.0 CONCLUSION

The proposed modification of the consent results in a development which is substantially the same as the original approval granted by Council under **DA2020/0855**.

The existing conditions of consent will continue to ensure that an adequate level of environmental performance is achieved.

Accordingly, the subject Section 4.55(2) application as described in this statement will result in no undue environmental impact and is substantially the same development as originally approved by Council.

On this basis Council should support the application to make changes to the approved plans, as described.



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