

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0629
Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot 1 DP 100633, 40 Belgrave Street MANLY NSW 2095 Lot 1 DP 104766, 41 Belgrave Street MANLY NSW 2095 Lot 1 DP 34395, 42 Belgrave Street MANLY NSW 2095 Lot 1 DP 719821, 43 Belgrave Street MANLY NSW 2095 Lot CP SP 14133, 35 - 39 Belgrave Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2023/0987 granted for Demolition and construction of a shop top housing development with basement parking
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	T&P Manly Land Pty Ltd

Application Lodged:	19/11/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	28/11/2024 to 12/12/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The development is described as Modification of Development Consent DA2023/0987 granted for Demolition and construction of a shop top housing development with basement parking.

The proposal includes:

- Modification to Condition 1, 16 and 23 of DA2023/0987 to facilitate the discharge of stormwater to Raglan Street instead of Whistler Street.

There are no other works proposed under this modification application.

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

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 5.21 Flood planning
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

Property Description:	Lot 1 DP 100633 , 40 Belgrave Street MANLY NSW 2095 Lot 1 DP 104766 , 41 Belgrave Street MANLY NSW 2095 Lot 1 DP 34395 , 42 Belgrave Street MANLY NSW 2095 Lot 1 DP 719821 , 43 Belgrave Street MANLY NSW 2095 Lot CP SP 14133 , 35 - 39 Belgrave Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of five(5) allotments located on the southern side of Raglan Street, western side of Whistler Street and eastern side of Belgrave Street. The site is irregular in shape with a 41.615m wide frontage to Belgrave Street, a 32.1m wide frontage to Raglan Street, a 24.41m wide frontage to Whistler Street to the east and a

total area of 1060m².

The site is located within the E1 Local Centre zone and accommodates a series of two and three storey mixed use developments..

The site generally flat with no significant change in topography.

The site includes very minimal landscaped area due to the existing mixed-use development located on the sites..

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by varying use, scale, density, age and architectural style. The surrounding development is primarily built up of commercial and residential development with Ivanhoe Park located directly to the west zoned as RE1 Public Recreation.

Map:



SITE HISTORY

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

- DA2023/0987: Demolition and construction of a shop top housing development with basement parking- approved by the Land and Environment Court on 30 July 2024.
- PLM2023/0054: Demolition works and the construction of shop top housing with basement parking- meeting on 13 Juner 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2023/0987, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2023/0987. The modification relates to stormwater disposal being a connection to Raglan St rather than Whistler St therefore is substantially the same development.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.56- Other Modifications	Comments
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	
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2023/0987.
(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 4.56 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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application. <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 clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 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 28/11/2024 to 12/12/2024 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
NECC (Development Engineering)	The proposal is to amend the stormwater discharge location approved under DA2023/0987. No objections to approval subject to the following amendments to the conditions of Consent Da2023/0987. Amend Condition 16 as follows: On-Site Stormwater Detention Details The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Van Der Meer Consulting, job number SY232-008, drawing number C000(E), C001(D), C401, C402(E), C405(D), C406(E), dated 11/10/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering. The drainage plans must address the following: i. Connection to the existing Council system shall be to the existing Council pit in Raglan Street. Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate. Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. Amend Condition 23 as follows: Submission Roads Act Application for Civil Works in the Public

Internal Referral Body	Comments
	Road The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include Civil Engineering plans for the design of vehicle crossing, street tree planting and stormwater connection which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information: 1. A vehicular crossing 6 meters wide should be constructed in accordance with Council's standard drawing Normal 2. Connection of site stormwater to existing Council kerb inlet pit in Raglan Street. 3. Details of street tree planting. 4. Any rectification of footpath/paving. 5. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.
NECC (Flooding)	This proposal is for the modification of Development Consent DA2023/0987. This proposal modifies conditions 1, 16 and 23, and alters the stormwater drainage system from the original Development Consent. The conditions proposed for amendment do not involve flood related conditions, and the stormwater drainage system is not subject to flood related conditions. Subject to the retention of the flood related Conditions on Development Consent DA2023/0987, this proposal generally complies with Section 5.4.3 of the Manly DCP and Clause 5.21 of the Manly LEP.

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

The development does not result in any changes to SEPP 65 - Design Quality of Residential Apartment Development. Therefore, the development is consistent with the determination under DA2023/0987 and does not require any further assessment.

SEPP (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/ 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/ 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

There are no proposed changes to the Principal Development Standards of Manly LEP under this application.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.14 Requirement for development control plans	Yes

Detailed Assessment

4.3 Height of buildings

There is no proposed change to the approved building height under this modification. Therefore, this Clause is not applicable.

4.4 Floor space ratio

There is no change from the approved Floor space ratio under this modification. Therefore, the Clause is not applicable.

5.21 Flood planning

Council's Flood Officer has reviewed the proposed modification and determined that the development is supported subject to the original conditions of DA2023/0987. The referral response from the Flood Officer is located under the 'referrals' subsection of this report. Therefore, it is considered that the development complies with Clause 5.21 Flood planning.

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(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

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

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

Comment: On-site stormwater retention has been incorporated into the development.

(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: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.12 Essential services

Under this clause, 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.*

Comment:

The subject site is supplied with the above essential services. The approved development and proposed modifications retain and rely upon these services.

Manly Development Control Plan

Built Form Controls

There are no proposed changes to the Built Form Controls of Manly DCP under this application.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

4.2.5.4 Car Parking and Access

The development does not result in any changes to Clause 4.2.5.4 Car Parking and Access. Therefore, the development is consistent with the determination under DA2023/0987 and does not require any further assessment.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0629 for Modification of Development Consent DA2023/0987 granted for Demolition and construction of a shop top housing development with basement parking on land at Lot 1 DP 100633,40 Belgrave Street, MANLY, Lot 1 DP 104766,41 Belgrave Street, MANLY, Lot 1 DP 34395,42 Belgrave Street, MANLY, Lot 1 DP 719821,43 Belgrave Street, MANLY, Lot CP SP 14133,35 - 39 Belgrave Street, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-487672-MOD2024/0629	The date of this notice of determination	Modification of Development Consent DA2023/0987 granted for Demolition and construction of a shop top housing development with basement parking. A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation. B. Modify Condition 16- On-Site Stormwater Detention Details. C. Modify Condition 23- Submission Roads Act Application for Civil Works in the Public Road.

Modified conditions

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

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

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Civil Plans (DRAWING NO: C402,C405, C406, C001)	E,D,E,D	Van der meer Consulting	11.10.2024

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. Modify Condition 16- On-Site Stormwater Detention Details to read as follows:

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Van Der Meer Consulting, job number SY232-008, drawing number C000(E), C001(D), C401, C402(E), C405(D), C406(E), dated 11/10/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Connection to the existing Council system shall be to the existing Council pit in Raglan Street.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

Reason: <insert reason and (code)>

C. Modify Condition 23- Submission Roads Act Application for Civil Works in the Public Road to read as follows:

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of vehicle crossing, street tree planting and stormwater connection which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. A vehicular crossing 6 meters wide should be constructed in accordance with Council's standard drawing Normal
2. Connection of site stormwater to existing Council kerb inlet pit in Raglan Street.
3. Details of street tree planting.
4. Any rectification of footpath/paving.
5. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

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

Signed



Lachlan Rose, Planner

The application is determined on 18/12/2024, under the delegated authority of:



Rodney Piggott, Manager Development Assessments