

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2025/0189
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Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot 30 DP 25654, 57 Cutler Road CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA2022/1675 for Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Luka Popovac

Application Lodged:	02/05/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	13/05/2025 to 27/05/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 12.5%
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks consent for Modification of Development Consent DA2022/1675 for Alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to a Modification of Consent under section 4.55(2) (formerly S96(2)) in relation to a development application previously determined by the DDP or its previous equivalent panel that:

- increases a non-compliance with a Local Environmental Plan development standard relating to Building height

Concerns raised in the objections predominantly relate to amenity, unauthorised building works, setbacks, change in development character and procedural failures.

Critical assessment issues included wall height, building height and maintenance of views.

The overall height of the building has resulted in an increase from the previously approved of 9.14m (57.42RL) to 9.57m (57.85), reflecting a 12.5% variation. This has resulted from a design amendment to the first floor roof form to reflect a 5 degree pitch from the east to west. It should be noted that the roof height will be slightly reduced to the eastern elevation of 0.2m and increase to the western elevation of 0.43m. The changes to the building height do not unreasonably increase the bulk or scale of the building and the outcomes of the original assessment under DA2022/1675 still stand.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

Lower ground floor

- balustrade added to stair on front entrance path
- delete W26 to the rear glazed doors

Ground floor

- metal balustrade added to top of rendered wall to balcony

First floor

- no changes

Roof

- amendment to the upper roof to result in a increased bitch to 5 degrees

External

- timber wall cladding to be removed and replaced with render
- blade wall stone to be replaced with render

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

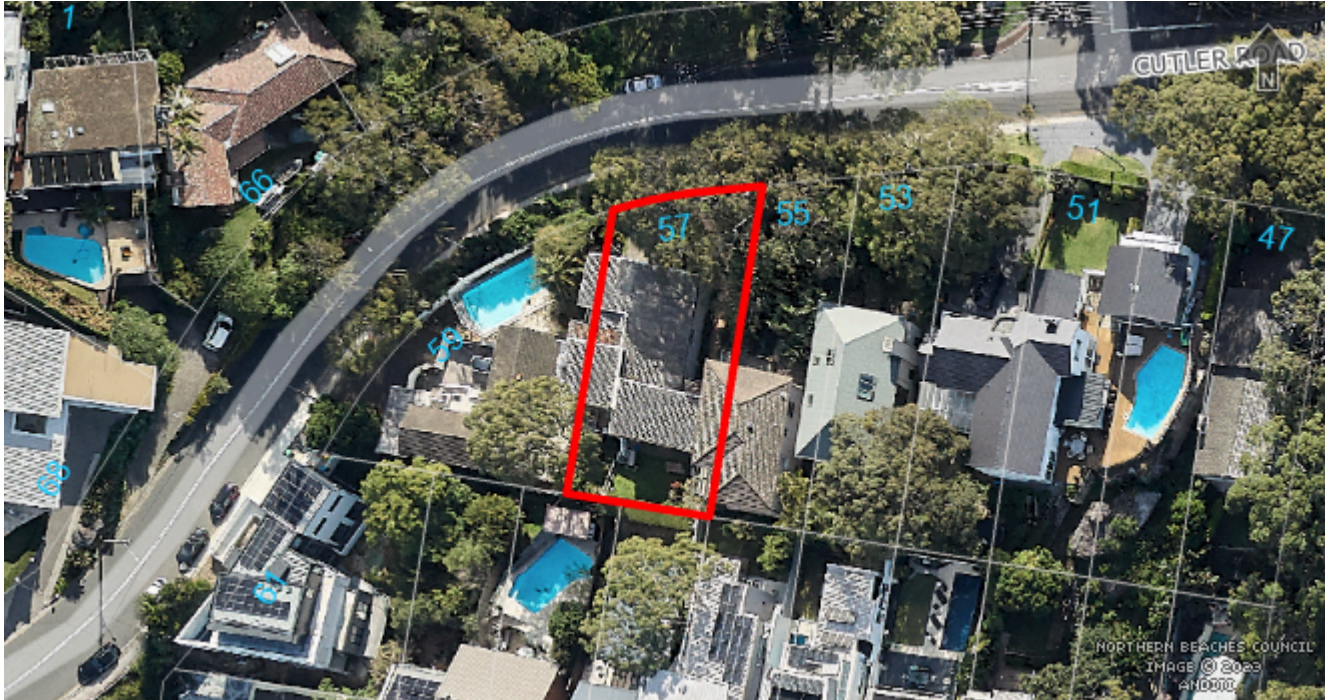
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 30 DP 25654 , 57 Cutler Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Cutler Crescent.</p> <p>The site is irregular in shape with a frontage of 16.925 metres along Cutler Crescent and a depth of 37.88 metres. The site has a surveyed area of 576.5m².</p> <p>The site is located within the R2 Low Density Residential zone within the Manly Local Environmental Plan 2013 (MLEP 2013) and is currently under construction for the development application.</p> <p>The site has a northerly orientation and is located on a cross-fall, falling from the east to the west, of approximately 3.39 metres (or 21.16%).</p> <p>The site is not known to have any threatened species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised</p>

by residential development, ranging between two and three storeys.

Map:



SITE HISTORY

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

- Development Application DA2022/1675: Alterations and additions to a dwelling house including a swimming pool- approved by Councils Development Determination Panel on the 14 June 2023.
- Modification application Mod2024/0570: Modification of Development Consent DA2022/1675 for Alterations and additions to a dwelling house- approved by Delegated Authority on 17 December 2024. It should be noted that this application included the removal of the swimming pool.

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 DA2022/1675, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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	<p>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 DA2022/1675 for the following reasons:</p> <ul style="list-style-type: none"> • The proposed modification is considered to not result in unreasonable additional amenity impact to adjacent properties or the public domain. • The built form of the dwelling will remain generally consistent with the approved development. • Streetscape character remains generally unchanged as a result of the works • Approved use remains unchanged • The modification relates directly to the previously approved alterations and additions • The approved setbacks and floor space ratio remain unchanged
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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	Development Application DA2022/1675 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental

Section 4.55 (2) - Other Modifications	Comments
(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	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 (2) 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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of

Section 4.15 'Matters for Consideration'	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>development consent. These matters have been addressed via a condition of consent.</p> <p><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.</p> <p><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.</p> <p><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.</p> <p><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.</p> <p><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.</p> <p><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.</p>
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	<p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
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	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
accordance with the EPA Act or EPA Regs	
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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

An addendum letter regarding the Bush Fire Report was submitted with the application that (prepared by Bushfire Planning & Design, dated 5 May 2022) stated the modification will not result in changes to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report were included as conditions of consent in the original application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 13/05/2025 to 27/05/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Sez Zahia Cardis	55 Cutler Road CLONTARF NSW 2093

The following issues were raised in the submissions:

- Compliance breaches
- Setback non-compliance
- Change in development character
- Amenity impacts

The above issues are addressed as follows:

- **Compliance breaches**

The submissions raised concerns that the modification results in compliance breaches including an unauthorised increase to the wall heights by 1m over the approved height and

states that the modification has attempted to legitimise unauthorised construction.

Comment:

The concern has been noted by Council's Building Compliance team and there is an investigation in place with the Certifier. The owner of 55 Cutler Road has been informed of this investigation and therefore, the above concerns of compliance breaches are subject to Council's Building Compliance Department.

The proposed plans correctly correspond with the approved stamped plans of Mod2024/0570 (the current approval) with the changes under this modification clouded in red. As mentioned, any illegal building works are subject to the investigation by Council's Building Compliance Department.

The concern **does not** constitute a reason for refusal.

- **Setback non-compliance**

The submissions raised concerns that the development results in setback non-compliances and fails to comply with the approved side setbacks due to the unauthorised increase in wall heights.

Comment:

The proposed development under this modification does not result in changes to the approved non-compliance to Clause 4.1.4 *Setbacks*. The plans accurately reflect the proposed changes from the previously approved plans under Mod2024/0570 and do not reflect an unauthorised increase in wall heights of 1m. As mentioned above, the concern for unauthorised works are subject to the current investigation by Council's Compliance team and the proposed modification accurately reflects the changes subject to this application.

Despite a minor increase of 0.4m in wall height to the western elevation on the first floor, the proposal does not result in any changes to the approved western setbacks. Additionally, the eastern wall height to the first floor results in a minor reduction of 0.2m with no further changes to the approved eastern setbacks. It should be noted that the approved/ existing first floor dwelling setbacks are compliant with the minimum setback requirements in relation to the wall heights proposed.

See Clause 4.1.2 *Height of Buildings* and Clause 4.3 *Height of Buildings* for a detailed assessment. As such, this concern **does not** constitute a reason for refusal.

- **Change in development character**

The submissions raised concerns that the application cannot satisfy Section 4.55(2) requirements as it is fundamentally different from the original approval. The submission mentions that the application is not substantially the same development.

Comment:

Upon assessment of this modification application, the proposed changes are acceptable and the development could be perceived as substantially the same development. As mentioned throughout this report, the proposed works under this modification do not significantly impact the built form of the approved development and will not result in unreasonable additional amenity impact to adjacent properties or the public domain. Specifically, the approved use remains unchanged, the modification relates directly to the previously approved alterations and additions, and the approved built form generally remains unchanged.

Therefore, this concern **does not** result in a reason for refusal.

- **Amenity impacts**

The submissions raised concerns that the proposed modification will result in amenity impacts.

Comment:

The proposed modification does not result in any changes to the eastern side setbacks or changes to the windows approved. The modification will result in a minor decrease in roof and wall height to the first floor of the eastern elevation and will maintain the detailed assessment under DA2022/1675 of Clause 3.4.2 *Privacy and Security* and 3.4.1 *Sunlight Access and Overshadowing*. As such, the modification works will not result in greater privacy or amenity impacts. A detailed assessment has been conducted under Clause 3.4.3 *Maintenance of Views* of this report, concluding that the proposed modification does not result in unreasonable impacts.

Therefore, this concern **does not** result in a reason for refusal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent DA2022/1675, including the request to remove Tree 1 (<i>Angphora costata</i>) at the rear of the property under the 10/50 vegetation clearing entitlement provision. The development application proposed retention of Tree 1.</p> <p>An Arboriculture Impact Assessment prepared by Arbor Express is submitted with the modification application, and determines that: "Tree 1 has a major encroachment of 27.5% due to the development. Removal of this tree has been recommended to accommodate the project because of the significant encroachment into the Tree Protection Zone (TPZ) and associated root loss. The development includes the installation of a new sewer line connecting to the main sewer, which is necessary to address existing major sewer issues, as the gully is higher than the internal floor level. Excavation to a depth of 1.2m is required for the sewer works to locate and install the new sewer line. Hand digging was attempted to route the sewer line beneath the existing root system, but this was unsuccessful due to the substantial amount of rock that needed to be removed. This rock cannot be removed without the use of an excavator which would</p>

Internal Referral Body	Comments
	<p>impact the root system of Tree 1. Every attempt has been made to avoid the impact to the tree but it is unachievable. As such removal of Tree 1 is required to install the new sewer line connecting to the main sewer".</p> <p>Given the above arboricultural reason, no objection to removal of Tree 1 is raised. A condition shall be added for tree removal.</p>
NECC (Bushland and Biodiversity)	<p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> SEPP (Resilience and Hazards) 2021 - Littoral Rainforest and Proximity Area <p>The proposal has been submitted with an arborist report that has recommended the removal of Tree 1 for the purposes of the development and establishment of a new sewerage line as the existing line has been compromised by root growth.</p> <p>As the tree poses a risk due to the impacts from development its removal will be approved subject to tree replacement with a suitable locally native tree.</p>
NECC (Development Engineering)	<p>The proposed modifications do not alter the original assessment of the application by Development Engineering.</p> <p>Development Engineering support the proposed modifications with no additional or modified conditions of consent recommended.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1760871_02 dated 23 April 2025).

A condition has been included in the recommendation of this report requiring compliance with the

commitments indicated in the BASIX Certificate.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

6.7 Aquatic ecology

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
 - (i) a controlled activity approval under the Water Management Act 2000, or*
 - (ii) a permit under the Fisheries Management Act 1994,*
- (c) whether the development will minimise or avoid—*
 - (i) the erosion of land abutting a natural waterbody, or*

- (ii) the sedimentation of a natural waterbody,*
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

Comment:

The proposal has been reviewed by Council's Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment.

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
- (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

The proposal will not impact any recreation or public access.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by Council's Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

6.14 Temporary use of land in Sydney Harbour Catchment

(3) Development consent may be granted to development on land in the Sydney Harbour Catchment for a temporary use for a maximum period of 52 days, whether or not consecutive, in a period of 12 months, even if the development would otherwise be prohibited by this Chapter.

(4) Development consent must not be granted unless the consent authority is satisfied of the following:

- (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Chapter and any other applicable environmental planning instrument,*
- (b) the temporary use will not have an adverse impact on adjoining land or the amenity of the neighbourhood,*
- (c) the temporary use and location of structures related to the use will not have an adverse impact on environmental attributes or features of the land or increase the risk of natural hazards that may affect the land,*
- (d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*

(5) Development consent may be granted to development for the temporary use of a dwelling as a sales office for a new release area or a new housing estate for a period exceeding the maximum period specified in subsection (3).

Comment:

The land use will retain as residential.

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 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment:

The proposed development is not located within coastal wetlands and littoral rainforest area.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The proposed development is not located on land in proximity to littoral rainforest area and is not expected to cause significant impact. The application has been assessed by Council's Biodiversity Officer and has provided a supportive referral response.

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:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

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

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

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.14m	9.57m	12.5% (1.07m)	No
Floor Space Ratio	FSR: 0.4:1	FSR: 0.517:1	as approved	N/A	N/A (no change)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	N/A
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

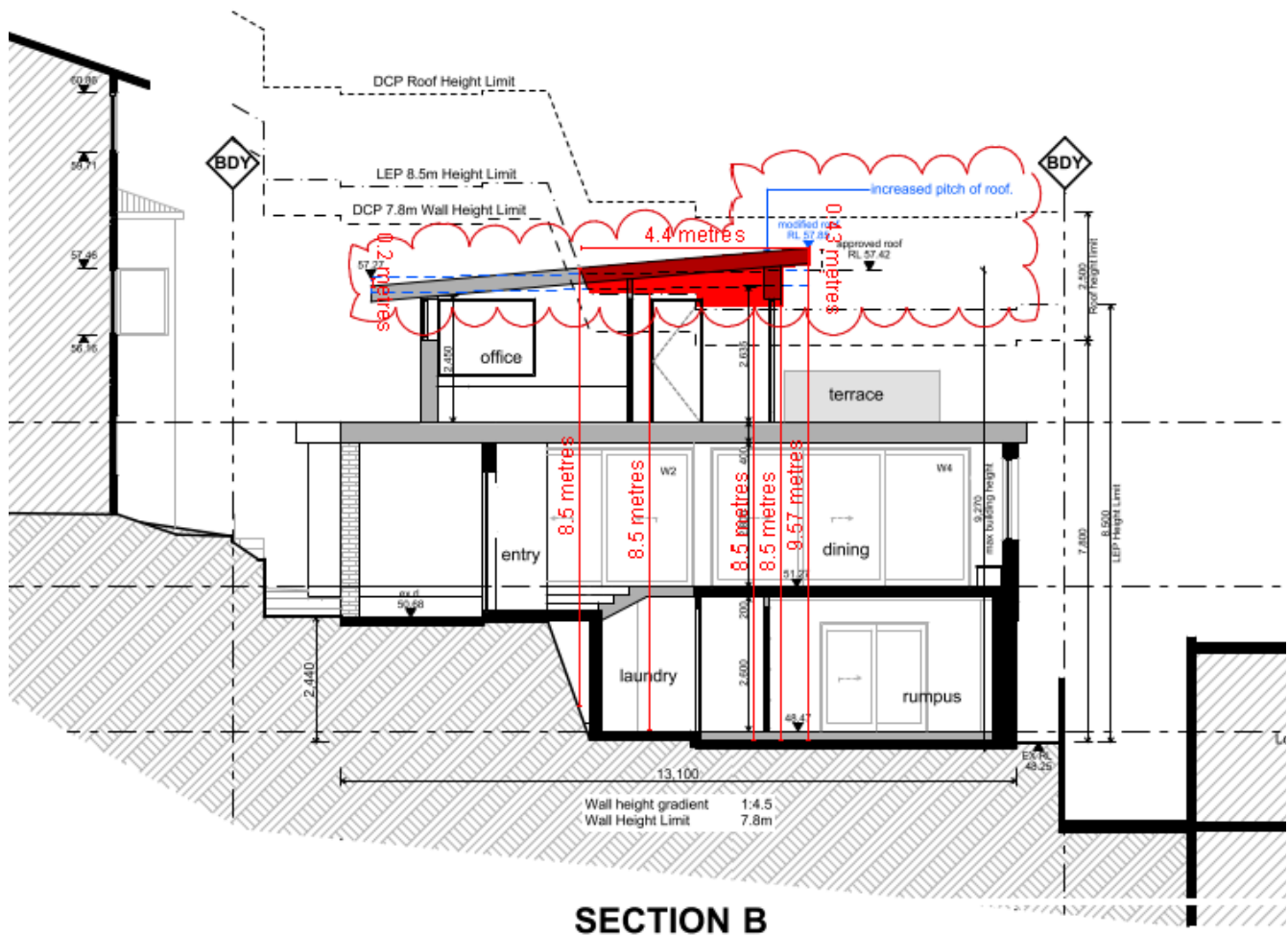
Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.57m
Percentage variation to requirement:	12.5%

Approved:



Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests

of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

The Applicant's written request under DA2022/1675 has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. This modification results in a 0.43m increase above the approved maximum building height with a reduction of 0.2m to the eastern portion of the roof. As demonstrated under DA2022/1675, the site has experienced excavation that has manipulated the existing ground level, therefore establishing site constraints that makes strict compliance with this requirement difficult. The slope of the land is significant, falling from the eastern boundary toward the western boundary (with a fall of approximately 5.89 metres [or 26.16%]). Therefore, the minor increase due to the design amendment to the roof pitch will not result in additional unreasonable impacts as addressed under DA2022/1675 and compliance is considered unreasonable or unnecessary.

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone (as per below) in which the development is proposed to be carried out.

Specifically, the scope of non-compliance maintains the previously approved length of 4.4 metres, where the existing ground level steps down to the lower ground level of the dwelling. The non-compliance is sited predominantly to the roof form, with a small amount of wall encroaching beyond the maximum building height (as indicated in the images above). The breach is setback substantial distances from the front and rear boundaries, as well as the western/ eastern side boundary. The outcomes of DA2022/1675 are maintained where the building mass of the proposed dwelling will achieve compatibility and consistency with the building bulk of adjoining properties along the southern side of Cutler Road. Therefore, the existing excavation of the site is a sufficient environmental planning ground to warrant contravention of this Clause.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

4.3 Height of buildings

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

Having regard to the portion of the building that extends beyond the prescribed maximum building height (being the roof form and small portion of the top of the wall to the western side of the first floor level), the proposal in its entirety is contextually appropriate to the subject site and commensurate with nearby and adjoining residential developments. The modification to the roof form will be consistent with topographic landscape, prevailing building heights of adjoining and nearby residential developments, and achieve consistency with the desired future streetscape character of the Clontarf locality

b) to control the bulk and scale of buildings,

Comment:

The plans were amended under DA2022/1675 to reduce the length of the non-compliance to the west and this application maintains the length of the variation approved. The increase in height is due to the design of the proposed 5 degree pitch in the roof. The roof form will not detract from the surrounding streetscape as the built form is controlled and minimised to achieve acceptable streetscape and residential amenity outcomes. Therefore, this modification will not result in unreasonable bulk and scale of the building.

c) to minimise disruption to the following—

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

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

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

Comment:

As detailed under DA2022/1675 and in this report, a view sharing assessment has been undertaken within this assessment and this can be found in section 3.4.3 Maintenance of Views. The increase to the numerical non-compliance to this development standard does not give rise to any unreasonable view loss from adjoining properties. The extent of view loss, as assessed under section 3.4.3 Maintenance of Views, is maintained as minor.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

Shadow diagrams have been provided with this modification application. A detailed assessment

of the solar access to the subject site and adjoining properties has been undertaken in the assessment report of DA2022/1675 under section 3.4.1 Sunlight Access and Overshadowing. The report determined that while technically non-compliant, the proposal is considered to be acceptable. As such, the provided shadow diagrams do not reflect an unreasonable or significant increase to the approved shadows and is considered to maintain the outcomes of the original assessment.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses,

Comment:

The subject site is located within the R2 Low Density Residential zone within the MLEP 2013, which is not a recreation or environmental protection zone. Therefore, this underlying objective of Clause 4.3 is not for consideration for this assessment.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

To provide for the housing needs of the community within a low density residential environment.

Comment:

The proposal does not result in an increase to the dwelling density of the subject site. The development will provide for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The proposal will not result in changes to the existing land use of a dwelling house and therefore, will enable the day to day needs of residents.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not

strictly apply and the concurrence of the Secretary is not required to be obtained.

4.4 Floor space ratio

There are no proposed changes to the approved Floor Space Ratio under this modification. As such, this Clause is not applicable in this circumstance.

4.6 Exceptions to development standards

Whilst the modification will result in a building height that contravenes the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

6.9 Foreshore scenic protection area

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

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

Comment:

The subject site is within the foreshore scenic protection area and is not foreshore land. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds, and does not result in view loss from a public place to the foreshore,
- is not closely visible from the coastline, so does not impact upon its scenic quality,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 576.5m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	E: 6.6m (based on gradient 1:60)	5.82m-6.9m	5.6m-6.7m	no (<approved)

	W: 6.6m (based on gradient 1:60)	8.7m	9.2m	No
4.1.2.3 Roof Height	Height: 2.5m	0.36m	0.3m	Yes
	Pitch: maximum 35 degrees	1.7 degrees	5 degrees	Yes
4.1.4.1 Street Front Setbacks	6m	Ground floor Dwelling: 8.67m- 11.07m Balcony: 6.5m - 8.75m	no change	Yes (as approved)
		First Floor Dwelling: 10.3m - 15.36m Balcony: 8.6m - 10.6m Terrace: 14.2m - 15.3m	no change	Yes (as approved)
4.1.4.2 Side Setbacks and Secondary Street Frontages	Eastern Boundary 2.23m (based on one third of proposed max. wall height)	Ground Floor Dwelling: 1.4m & 4.6m (existing) Rear terrace: 0.3m (proposed) Front Balcony: 4.8m (existing) First Floor Dwelling: 3.05m & 3.7m (existing) Rear balcony: 3.7m (existing) Front balcony: 4.2m (existing)	no change	No (as approved)
	Western Boundary 3.07m (based on one third of proposed max. wall height)	Lower Ground Floor Dwelling: 0.96m & 1.4m (existing) Ground Floor Dwelling: 1.06m & 2.1m (existing) Rear balcony: 1.4m (existing) Front balcony: 0.9m (proposed) First Floor Terrace: 2.4m (existing) Dwelling: 5.4m, 6.95m & 7.16m (existing)	no change	No (as approved)

		Rear balcony: 7.0m (existing)		
	Windows: 3m	Eastern Elevation Lower Ground Floor: <3.0m Ground Floor: <3.0m First Floor: >3.0m	No change	as approved
		Western Elevation Ground Floor: >3.0m First Floor: <3.0m	No change	as approved
4.1.4.4 Rear Setbacks	8m	Lower Ground Floor Dwelling: 7.3m (existing)	No change	as approved
		Ground Floor Dwelling: 7.5m & 10.4m (existing) Terrace: 3.3m (proposed) Balcony: 7.3m (existing)	No change	as approved
		First floor Dwelling: 8.0m (existing) Terrace: 10.4m (existing) Balcony: 6.8m (existing)	No change	as approved
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (345.9m ²) of site area	54.7% (315.6m ²)	No change	as approved
	Open space above ground 25% of total open space	14.5% (45.9m ²)	No change	
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	55.7% (176.1m ²)	No change	as approved
	3 native trees	3 trees	3 trees	Yes (conditioned)
4.1.5.3 Private Open Space	18m per dwelling	>18sqm	>18sqm	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.73m (22% of frontage)	no change	Yes (as approved)
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	no change	Yes (as approved)

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed development results in areas of minor increases and decreases in the total overshadowing from the approved development and proposed. In the instances of the minor increases, they result at 12pm to the rear and 3pm to the east where there are no changes at 9am. These additional impacts from the proposed development are very minor and the detailed assessment under DA2022/1675 is still applicable in this instance.

3.4.2 Privacy and Security

As addressed in the detailed assessment under DA2022/1675, subject to the applied conditions, the proposed development can achieve the requirements of these controls. Therefore, there are no further impacts to this Clause under this application and the detailed assessment still stands in this instance.

3.4.3 Maintenance of Views

Detailed assessment

The initial assessment under DA2022/1675 addressed view loss impacts from the eastern property at 55 Cutler Road Clontarf. The proposed changes in the modification include material changes to the external dwelling, increase in roof height and pitch and minor balustrading works. There are no further changes to the built form or dwelling outline. Considering the detailed assessment under DA2022/1675 and the minor increase in roof height, a merit assessment has been conducted below.

Merit consideration:

The development is considered against the Objectives of the Control:

- Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
- Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*
- Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

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

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

Comment:

The modification allows for view sharing across the roof area being amended from the east to the

west. As mentioned in the original assessment, the views obtained toward the south, which includes Sydney City, are valued more highly than the views obtained toward the west and south-west that includes the land-water interface, district views and Chinaman's Beach, which are obscured by the surrounding built and natural environment. The modification remains consistent with the original view assessment including the more valued views to the south.

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

Comment:

The original assessment addressed the views from 55 Cutler Road that enjoys views across the side and rear boundaries, but primarily over the side boundary toward the south-west and west. The views are enjoyed from both a standing and a seated position. See the original assessment under DA2022/1675 for indicative photos and analysis.

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

Comment:

The assessment has found that the extent of view loss, when considering the whole of the property, is considered minor and the proposed development will provide an acceptable view sharing outcome. Specifically, the initial assessment addressed that some Harbour views will be impacted from the proposed development and it is considered that the change in roof pitch/ height will not result in unreasonable impacts from the approved development.

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

Comment:

The initial assessment states:

The portion of the development along the eastern side boundary (adjacent to 55 Cutler Road) achieves compliance with the maximum allowable wall height and side setback for the proposed first floor level. However, where there is a non-compliance to the side setbacks, this is sited at the ground level and does not create unreasonable impacts upon views for the adjoining property. The rear setback non-compliance to the proposed first floor level has been increased through amended plans, to which this assessment is based upon. As shown in the figures above, it is considered that the

proposed rear setback distance does not create an unreasonable view impact.

The proposal results in a reduction to the wall height and roof height to the eastern portion and does not result in any changes to the side or rear setbacks. The modification will result in a lower roof height to the eastern portion of 0.2m and a max increase to the western portion of 0.43m. Due to the minor changes and reduced roof height to the east, the detailed assessment under DA2022/1675 still stands in this circumstance.

The 0.43m increase to the approved maximum building height as prescribed under Clause 4.3 of the *Manly Local Environmental Plan 2013* (MLEP 2013) has been addressed under this Clause. However, due to the slope of the land, the maximum height breach is sited along the western elevation where the site slopes away to the west. Therefore, this breach does not create any unreasonable material impact upon the extent of view loss to 55 Cutler Road, Clontarf, which is sited to the east of the subject site.

Notwithstanding the numerical non-compliances to relevant controls within the MLEP and MDCP, the extent of view loss, which is considered as minor when assessing the views obtained from the whole property, is acceptable, in this instance.

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

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

Description of non-compliance

This control requires development to result in a maximum wall height that is calculated based on the slope of the land sited under the proposed wall.

The topography of the land has been substantially manipulated over the years, resulting in extensive excavation. The gradient of the land sited under the external walls along the eastern and western elevations are as follows:

- Eastern Elevation: 1:60
- Western Elevation: 1:60

In this instance, the maximum wall height requirements are as follows:

- Eastern Elevation: 6.6 metres
- Western Elevation: 6.6 metres

The proposed wall heights are as follows:

- Eastern Elevation: 5.6 metres - 6.7 metres (gradually becoming non-compliant, presenting a maximum variation of 1.5%)
- Western Elevation: 6.2 metres (presenting a variation of 39%)

It should be noted that the modification results in a reduced wall height to the eastern elevation and an increased wall height to the western elevation from approved.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.3, above in this report. In summary, the proposed wall heights, notwithstanding the numerical non-compliance, can be supported on its merits.

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

This modification application does not seek to alter the numerically non-compliant side and rear setbacks approved under DA2022/1675, nor change windows approved within 3m of a side boundary. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

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

PLANNING CONCLUSION

This proposal, for Modification of Development Consent DA2022/1675 for Alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a Modification of Consent under section 4.55(2) (formerly S96(2)) in relation to a development application previously determined by the DDP or its previous equivalent panel that:

- increases a non-compliance with a Local Environmental Plan development standard relating to Building height

The concerns raised in the objections have been addressed and resolved by a detailed assessment under the required Clause and discussions under the 'Submissions' subheading of this report.

The critical assessment issues include wall height, height of buildings and maintenance of views.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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. Mod2025/0189 for Modification of Development Consent DA2022/1675 for Alterations and additions to a dwelling house on land at Lot 30 DP 25654,57 Cutler Road, CLONTARF, 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-528272-MOD2025/0189	The date of this notice of determination	<p>Modification of Development Consent DA2022/1675 for Alterations and additions to a dwelling house.</p> <p>A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation B. Add Condition 18A- No Clearing of Vegetation C. Add Condition 20B- Tree Removal Within the Property D. Add Condition 30A Pre-clearance Survey E. Add Condition 30B- Wildlife Protection F. Add Condition 30C- Protection of Habitat Features G. Add Condition 33B- Replacement of Canopy Trees H. Add Condition 33C No Weeds Imported On To The Site I. Add Condition 33D- Priority Weed Removal and Management J. Add Condition 35A- Protection of Habitat Features K. Add Condition 35B- Control of Domestic Dogs/Cats</p>
PAN-478104-MOD2024/0570	17 December 2024	<p>Modification of Development Consent DA2022/1675 for Alterations and additions to a dwelling house.</p> <p>Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation Add Condition No. 20A - Tree Removal Within the Property Add Condition No. 33A - Required Tree Replacement Delete Condition No. 34 - Swimming Pool Requirements Delete Condition No. 36 - Swimming Pool/Spa Motor Noise</p>

Modified conditions

A. Add Condition No.1B - 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
B.01	B	Site plan + site analysis	GARTNERTROVATO	02/06/25
B.02	B	plan - lower ground floor	GARTNERTROVATO	02/06/25
B.03	B	plan - ground floor	GARTNERTROVATO	02/06/25
B.04	B	plan - first floor	GARTNERTROVATO	02/06/25
B.05	B	elevation - north, east	GARTNERTROVATO	02/06/25

B.06	B	elevation - south, west	GARTNERTROVATO	02/06/25
B.07	B	section - A, B	GARTNERTROVATO	02/06/25

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Bushfire Letter	-	Bushfire Planning and Design	5 May 2025
BASIX Certificate (A1760871_02)	-	Mr LUKE TROVATO	23 April 2025
Stormwater Plans (DWG No: SW1, SW2)	-	Barrenjoey Consulting Engineers	21.01.2025

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 18A- No Clearing of Vegetation to read as follows:

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

C. Add Condition 20B- Tree Removal Within the Property to read as follows:

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment as listed below:

- a) Tree 1 Angophora costata,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

D. Add Condition 30A Pre-clearance Survey to read as follows:

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

E. Add Condition 30B- Wildlife Protection to read as follows:

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

Reason: To protect native wildlife.

F. Add Condition 30C- Protection of Habitat Features to read as follows:

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

G. Add Condition 33B- Replacement of Canopy Trees to read as follows:

At least 1 locally native *Angophora costata* is to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping

H. Add Condition 33C No Weeds Imported On To The Site to read as follows:

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

I. Add Condition 33D- Priority Weed Removal and Management to read as follows:

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

J. Add Condition 35A- Protection of Habitat Features to read as follows:

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

K. Add Condition 35B- Control of Domestic Dogs/Cats to read as follows:

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.