

**STATEMENT OF MODIFICATION - APPLICATION TO MODIFY CONSENT UNDER
S4.55 (2) OF THE ENVIRONMENTAL PLANNING & ASSESMENT ACT 1979**

**FOR THE PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS
TO AN EXISTING DWELLING**

AT

95 BOWER STREET, MANLY

FOR

BARRIE & IKUYO FELDMAN



**Prepared
August 2022**

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1.0 Introduction

This Statement of Modification Environmental Effects accompanies architectural details prepared on behalf of Barrie and Ikuyo Feldman by Your Beautiful Home, Sheets MOD101 – MOD134, Revision H, dated 9 August 2022 which seek to modify the development consent issued under Notice of Determination dated 22 December 2021 to detail the proposed construction of alterations and additions to an existing dwelling at **95 Bower Street, Manly**.

This Statement of Modification has been prepared to assist Council in the consideration of an application pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 to alter the development as approved by Development Consent DA2021/0668.

The proposed modifications to the notifications the dwelling have been highlighted within the revised architectural plans and do not result in any increase in the overall height of the dwelling or the general position of the dwelling on the site.

2.0 Background

An application for consent for *“Alterations and additions to a dwelling house”* was approved by Council by Notice of Determination dated 22 December 2021.

The approved alterations and additions the dwelling have not commenced.

3.0 Proposed Modifications

The application involves a change to the form of the approved additions and alterations to the existing dwelling, which was recently considered under the Notice of Determination of DA2021/0668.

Specifically, the proposed works involve the following changes:

- **Generally**
 - The main roof height is as approved
 - The first floor balustrade design has been revised as a result of the requirement to retain the ground floor gable, which will provides for a more functional space and assist in making the retained gable more legible in the façade
 - The height/ pitch of the ground floor gable has been reduced so that it aligns with the top of the balustrade
- **Lower Ground Floor**
 - No change
- **Ground Floor**
 - Revised openings
 - New bay window do Living 2

- Minor revisions to interior layout
- **First Floor**
 - Minor revisions to interior layout
 - Reduced size of exterior deck - slightly extending interior space of Main Bed and Living
 - Changed balustrading to first floor deck
- **Roof Plan**
 - New gable over Living and Main Bed facing street
 - Removed gable over deck
 - New gable to the rear over main stair
 - New skylights
 - New awning over first floor deck
- **North East Elevation**
 - Reduced pitch of first floor gable so the ridge line aligns with the height of the first floor deck balustrade
 - New gable to First floor over Main Bed and Living
 - Removed first floor gable over deck
 - Changed balustrade to be more open - so ground floor gable is more visible
 - Revised sizes of first floor window openings
 - Reduced size of first floor deck outside Main Bed and Living area
- **South West Elevation**
 - Revised location of ground floor openings
 - Additional openings on first floor
 - Changed roof design to rear
 - New skylights on rear section of roof
- **North West Elevation**
 - Slightly relocated the first floor addition to the rear for more symmetrical raked ceiling lining internally
 - Gable to front and rear visible from this elevation
- **South East Elevation**
 - Revised ground floor doors from Piano Room
 - Revised window sizes on first floor
 - New awning on first floor
 - Revised Balustrade design
 - New Bay window to Living Room 2 on Ground Floor
 - Gables to front and rear where visible from this elevation

The following documentation has been prepared to support the proposed modifications:

- Revised Architectural Plans prepared by Your Beautiful Home, Revision H, dated 9 August 2022
- Updated Flora & Fauna Assessment prepared by GIS Environmental Consultants, Project No. BS57TBR02, dated 14 April 2022
- Revised Heritage Assessment prepared by Damien O'Toole Town Planning and Heritage, dated August 2022.
- Revised BASIX Certificate dated 8 August 2022
- Revised Landscape Planting Plan prepared by Harrison's Landscaping, dated 9 June 2022

The development indices for the site are:

Site Area	799.7m ²
Permissible FSR	0.6:1 or 479.8m ²
Proposed FSR	0.438:1 or 350.7m ²
Required Open Space/Landscape	55% open space – 439.8m ² /35% landscaped area – 153.9m ²
Proposed Open Space	59.8% or 478.9m ²
Proposed Landscape	65.3% or 313m ²

4.0 Zoning and Development Controls

4.1 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal has been designed to respect the water, thermal and energy standards required by BASIX. A revised BASIX certificate has been submitted with the development application.

4.3 State Environmental Planning Policy (Coastal Management) 2018

The subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is applicable to the proposed development.

The stated Aim of the Policy under Clause 3 is to:

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

The Coastal Management Act 2016 states within **Clause 3**:

The **objects** set out in **Clause 3** of the Coastal Management Act 2016 are:

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and*
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and*
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and*
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and*
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and*

- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and*
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and*
- (h) to promote integrated and co-ordinated coastal planning, management and reporting, and*
- (i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and*
- (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and*
- (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and*
- (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and*
- (m) to support the objects of the Marine Estate Management Act 2016.*

It is submitted that the assessment detailed under the Statement of Environmental Effects suggests that the proposed development is consistent with the objects of the SEPP (Coastal Management) 2018, as set out in Clause 3 of the Coastal Management Act 2016.

The matters for consideration under Division 3, 4 and 5 of SEPP (Coastal Management) 2018 are:

13 Development on land within the coastal environment area

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

The proposed development seeks to minimise the site disturbance, and erosion and sediment control measures will be carried out as necessary.

The proposed publications to the roof form do not substantially alter the roof area, which will continue to be directed to the existing stormwater system, in accordance with the stormwater design prepared by Michal Korecky. No water quality impacts are anticipated.

The works are wholly contained within the subject site, and will not result in any adverse impacts on any native or marine vegetation or fauna. A suitable area of open space and landscaping is retained.

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(a) has considered whether the proposed development is likely to cause an adverse impact on the following—

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

(iv) Aboriginal cultural heritage, practices and places,

(v) cultural and built environment heritage, and

(b) is satisfied that—

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

The proposed minor modifications are wholly contained within the subject site, and will not result in any loss of public access along the foreshore.

Due to the separation of the site from the foreshore and modest bulk and scale of the development, no problematic overshadowing of the foreshore or neighbouring properties is anticipated.

The proposed modifications to the dwelling continue to step to follow the sloping topography of the site, and utilise earthy colours and finishes. The works are modest in height and scale, and will not be visually prominent within the locality.

15 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.

The proposal modifications will continue to provide for the construction of alterations and additions to an existing dwelling. The proposed works will be carried out in accordance with the recommendations of the consulting Structural Engineer, and are therefore not considered to increase the risk of coastal hazards for the subject property or adjoining land.

The assessment has concluded that the proposed development is consistent with the matters for consideration under the SEPP (Coastal Management) 2018.

4.4 Manly Local Environmental Plan 2013

The land is zoned R1 General Residential under the provisions of the MLEP 2013.



Fig 1: Extract of Manly Local Environmental Plan 2013

The development of and use of the land for residential purposes is consistent with the R1 zone objectives, which are noted as:

- *To provide for the housing needs of the community*

- *To provide for a variety of housing types and densities*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

It is considered that the proposed modifications to the approved alterations and additions will achieve the zone objectives and are consistent with the established character of the surrounding locality for the following reasons:

- The proposal largely maintains the existing built form of the dwelling and therefore maintains consistency with the existing varied residential within the locality.
- The proposed new works will provide for increased residential amenity for the dwelling's occupants.
- The proposal does not have any unreasonable impact on views, solar access or amenity for the neighbouring properties.
- The site is utilised as housing and will continue to maintain the residential use.
- The proposed alterations and additions will conserve the significance of the heritage items in the vicinity of the site.
- The proposed alterations and additions will maintain compatibility with the existing development in this portion of Bower Street.

Clause 4.3 – Height of buildings

The dictionary supplement to the LEP notes building height to be:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The building height limit for development in this portion of Manly is 8.5m. The proposed modifications to the approved alterations and additions will maintain the approved overall height of 9.435m. A written request under clause 4.6 of the MLEP 2013 was previously considered and as the proposal will not alter the approved height of the building, no further assessment is considered necessary in this instance.

Clause 4.4 provides a maximum floor space ratio control of 0.6:1 for development in this locality. The proposed new works will provide a floor space ratio of 0.438:1 and therefore readily complies with this control.

Clause 5.10 relates to heritage conservation. The site does not contain any heritage items, nor is it within a conservation area. However, the site is within the vicinity of a number of heritage items, including street trees along Bower Street (Item No. I90) and St Patrick's Estate (Item No. I131).

The objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Manly,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

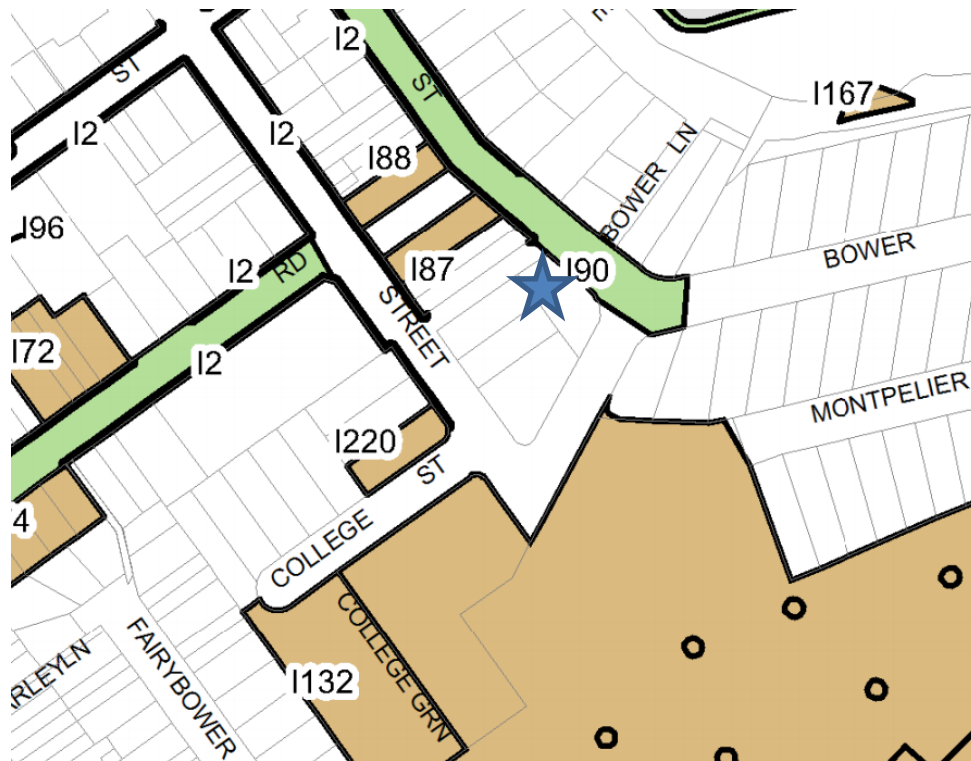


Fig 2: Extract of Manly Local Environmental Plan 2013 Heritage Map

The proposal is supported by a revised Heritage Impact Statement, prepared by Damian O'Toole Town Planning and Heritage Services, dated August 2022May 2021.

The heritage assessment concludes:

*"This report has found that the proposed modification works will have a **neutral** heritage impact only on the wider setting of identified heritage items.*

The works will retain the overall form and character of the dwelling as that consented to.

It is recommended that consent be granted for the proposed modification works".

Clause 6.1 addresses the impact of works in relation to acid sulfate soils. The site is identified as Class 5 Acid Sulfate Soil. The proposal will not see any major excavation to accommodate the proposed works, and it is not anticipated that any acid sulfate soils will be encountered.

Clause 6.2 – Earthworks

The proposed locations the design do not significantly alter the extent of the approved works and the disturbance to the site conditions.

All works will be carried out under the supervision and direction of a Structural Engineer and will

be managed to ensure that the amenity and safety of the subject and neighbouring dwellings will be protected.

Clause 6.4 – Stormwater management

The proposal meets the objectives of the clause as stated below in 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*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The proposed modification to the approved works are largely contained within the building footprint and the existing stormwater arrangements will remain unchanged.

The new roof areas will be connected to the existing drainage system which direct stormwater street gutter in Bower Street in accordance with the design prepared by Michal Korecky O Engineer.

Clause 6.5 – Terrestrial biodiversity

The site is identified as being within the Biodiversity Area on Council's Mapping.

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

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The proposed modifications to the approved design remain largely contained within the approved building footprint, and maintain a generous area of soft landscaping.

The proposal will not require the removal of any significant vegetation. A Landscape Planting Plan has been prepared by Harrison's Landscaping, dated 9 June 2022 and accompanies this submission.

The proposal will not result in adverse environmental impacts and is therefore in keeping with the provisions of this clause.

Clause 6.9 – Foreshore scenic protection area

The subject site is located in the Foreshore Scenic Protection Area.

This clause provides that 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.*

The proposed modifications to the approved design for alterations and additions are modest in bulk and scale, and are not considered to result in any unreasonable loss of views to and from the foreshore area.

The proposal will not result in any additional overshadowing on the foreshore area.

The proposal is largely contained within the approved building footprint and envelope. A suitable area of soft landscaping is retained, and the proposal will not see the removal of any significant vegetation.

Given the complementary nature of the development, the proposal is not considered to detract from the scenic qualities of the locality.

There are no other clauses of the MLEP 2013 that are considered to be relevant to the proposed development.

It is considered that the proposal achieves the requirements of the MLEP.

4.5 Manly Development Control Plan 2013

Council's DCP Development Control Plan 2013 provides the primary control for development within the area.

This Modification submission will address the Council's submission requirements outlined in Part 2 – Process.

The primary areas which are applicable to the proposed works are detailed within Part 3 – General Principles of Development & Part 4 – Development Controls and Development Types.

Clause 3.1.1 Streetscape (Residential Areas)

The proposal seeks modify the consent for alterations and additions to the existing dwelling.

The intended outcomes are noted as:

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

The proposed modifications to the approved alterations and additions retain the two and three storey scale, which is in keeping with the bulk and scale of existing surrounding development. The proposal is therefore not considered to result in a significant impact on the site as viewed from Bower Street.

The proposed modifications will not detract from the significance of the nearby heritage items, and the new works will not be overbearing within the Bower Street streetscape.

Clause 3.1.1.3 – Roofs and Dormer Windows

The proposed modifications will retain the low profile roof form and gables which were the focus of the original determination, which assists with minimising the visual bulk of the development.

Clause 3.3 – Landscaping

No substantial indigenous planting is to be removed to accommodate the new works. The existing vegetation on site is to be retained and protected.

A comprehensive Landscape Planting Plan has been prepared by Harrison's Landscaping, dated 9 June 2022 and which provides for the managed replanting of the site with a number of replacement plantings that can achieve a mature height of in excess of 8m in order to re-establish an appropriate tree canopy.

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

The objectives of the clause are noted as:

- | | |
|---------------------|---|
| <i>Objective 1)</i> | <i>To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties.</i> |
| <i>Objective 2)</i> | <i>To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.</i> |

It is suggested that the proposed modifications to the approved design will continue to achieve these objectives as the proposal provides for the construction of alterations and additions to the existing dwelling, which will not result in any unreasonable impacts on the views, solar access, privacy or amenity currently received by neighbouring properties.

Properties are merely to the south-west of the proposal at No's 29 & 31 Reddall Street currently enjoys views over and past the existing dwelling. The sites have recently been the subject of proposals for the demolition of the structures and the consolidation of the sites for high-density development. At this stage, the buildings within the sites remain intact.

A revised View Study (VS01 – VS04 – Issue G dated 1 August 2022) has been prepared by Your Beautiful Home, which provides a comparison assessment of the views currently available to the adjoining units and indicates the views which will continue to be all available following the proposed works.

The revised View Study confirms that the existing ground and first floor apartments in the rear buildings at 29 & 31 Reddall Street enjoy views towards the north to Cabbage Tree Bay. The foreground views are currently restricted by the existing development opposite the subject site on the northern side of Bower Street.

The assessment concludes that the proposed modifications to the approved design which maintain the existing ridge level will retain the views for the southern neighbour, as anticipated in the original Determination.

Clause 3.5 – Sustainability

A revised BASIX Certificate has been prepared to support the proposed development.

Clause 3.7 – Stormwater Management

The approved stormwater arrangements remain largely unchanged. The new roof areas will be connected to the street gutter in Bower Street, in accordance with the Site Drainage Concept Plan prepared by Michal Korecky, Drawing No 21035, Sheets SW1 & SW2 dated 22 April 2021.

Part 4 – Residential Development Controls

Site Area 799.7m² - Density Sub Zone D3 (250m² per lot)

Compliance Table

Control	Required	Proposed	Compliance
Clause 4.1.1 Residential Density & Subdivision	Density Area D3 – 1 dwelling per 250m ²	Site area is 799.7m ²	Yes – existing site and dimensions are unchanged
Clause 4.1.2 Height of Buildings	Maximum height – 8.5m Wall height – 7.3m Max two storeys Roof height – 2.5m above wall height	Maximum height of new works 9.35m Max proposed wall height approx. 7.3m, and therefore is consistent with the original determination. Two storeys provided. The proposed garage and store level is located partly below natural ground level and the building retains a largely two storey height and scale. <2.5m above wall height	Yes - Maximum height remains unchanged from original determination. Yes – consistent with original determination
Clause 4.1.13 Floor Space Ratio (FSR)	0.6:1	Proposed FSR 0.438:1	Yes

Clause 4.1.4 Setbacks (front, side and rear) Secondary setback – side setback control of prevailing building line Side Boundary setback – 1/3 of wall height	Relate to neighbouring sites or 6m	Existing front, side and rear setback of the dwelling remain largely unchanged, with the proposed.	Yes – remains consistent with approved design
Clause 4.1.5 Open space and Landscaping	Area OS 3 Min 55%/35%	Proposed total open space 59.8% or 478.9m² and proposed soft open space 65.3% of total open space or 313m². The open space and landscaped area readily complies with this control. The proposal is generally consistent with the original determination. The proposal will not require the removal of any significant vegetation. The property boundaries are capable of accommodating new landscape plantings to further assist with softening	

		the built form of the development. Suitable pervious areas are maintained within the site to minimise any potential impacts of stormwater runoff within the locality. The proposal is in keeping with the desired outcomes of this clause, and is worthy of support on merit.	
Clause 4.1.6 Parking	2 spaces In relation to the provision of parking for dwelling houses, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.	The modified proposal retains the approved car spaces	Yes

Clause 4.1.8 Development on Sloping Sites	<u>Area G4 – Potential Hazards and Requirements</u> Geotechnical assessment may be required depending on location and nature of development and man-made cut and fill. Residential footings are to be in accordance with AS2870. Potential hazards for this land include rock falls & minor slumping of soil and fill materials from top of unsupported cuts onto public and private pathways, roadways and building platforms. There is little to moderate typical consequences of failure involving damage of some or part of structures (for example, to a dwelling or roadway), with part of site requiring some stabilisation works. Large scale stabilisation works are unlikely to be required in Area G4.	The modified proposal will not require any further substantial disturbance of the site in order to accommodate the new works. The works will be carried out under the guidance of a qualified Structural Engineer, and the proposal therefore satisfies the provisions of this clause.	Yes
Clause 4.4.5 Earthworks	To retain the existing landscape character and limit change to topography and vegetation within the MLEP area by: Limiting excavation ‘cut and fill’ and other earthworks Discouraging the alteration of the natural flow of ground and surface water Ensuring that development not cause sedimentation to enter drainage lines and waterways Limiting the height of retaining walls and encouraging the	The modified proposal will not require any further substantial disturbance of the site in order to accommodate the new works. Appropriate erosion and sediment controls will be carried out to ensure minimal site disturbance. The works will be carried out under the guidance of a qualified Structural Engineer. The	Yes

	planting of native plant species to limit their impact	proposal therefore satisfies the provisions of this clause.	
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Part 5 – Special Character Precincts Areas and Sites

Compliance Table

Control	Required	Proposed	Compliance
Clause 5.4.1 Foreshore Scenic Protection Area	Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also: i) minimise the contrast between the built environment and the natural environment ii) maintain the visual dominance of the natural environment; iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat; iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas; v) locate rooflines below the tree canopy; vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines	The relevant provisions of the LEP are addressed within Clause 6.9 of the LEP above. The proposed locations to the approved additions and alterations will continue to maintain an appropriate height and scale, with the overall height of the building unchanged. The proposal will not see the removal of any significant vegetation and the existing vegetation will be retained and protected. The proposal is therefore considered appropriate in the foreshore scenic protection area.	Yes

	and other natural features; and vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality		
Clause 5.4.2 Threatened Species and Critical Habitat Lands	Any development of land with known habitat for threatened species must consider the likely impacts of the development and whether further assessment needs to be undertaken by a Species Impact Statement.	The proposal will not involve substantial site disturbance and provision has been made within the proposed front fence to allow for ground dwelling animals including bandicoots to move throughout the site. A revised Flora and Fauna Assessment has been prepared by GIS Environmental Consultants, Ref No. BS56TBR02, dated 14 April 2022 and accompanies this submission.	Complies

5.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

5.1 The provisions of any environmental planning instrument

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under Section 4.55(2) which notes:

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted*

by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

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

Accordingly, for the Council to approve the S4.55 Modification Application, the Council must be 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.

Legal Tests

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289* where His Honours states:

[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

In my opinion, in terms of a “qualitative comparison”, the Modification Application is substantially the same development as that which was approved within Consent DA2021/0668.

The works continue to provide for additions and alterations to the existing dwelling, with no substantive change to the external configuration height and impact of the development to the public domain or to the neighbouring property

The revised design with the altered internal configuration will not introduce any significant issues for the neighbouring properties in terms of view loss or privacy.

When viewed from the public domain or from the neighbouring properties, the development will largely present the same visual impact and appearance to that originally approved.

Similarly, the application is substantially the same development when subjected to a “quantitative comparison”, as the works will continue to provide for a “*Alterations and additions to a dwelling house*” in a location and in a form which is consistent with the consent.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination and the application can be reasonably assessed by Council under S4.55 of the Act.

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

There are no draft instruments applying to the land.

5.3 Any development control plan

The development as modified has been designed to comply with the requirements of Council’s Manly Development Control Plan 2013.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to the wall height and side setback controls is a reasonable alternative solution to compliance where the site conditions result in a challenge to designing for new development which fully respects the criteria.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

5.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

No matters of relevance are raised in regard to the proposed development.

5.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

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

It is considered that the proposal, which seeks consent for minor modifications to the approved alterations and additions to the existing dwelling, will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the residential character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's MLEP 2013 and Council's Codes and Policies, in particular the Manly DCP 2013.

5.7 The suitability of the site for the development

The subject land is currently zoned R1 General Residential under the Manly Local Environmental Plan 2013 and is considered suitable for the proposed development.

5.8 Any submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

5.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

6.0 Conclusion

The test established in **Moto** requires both a quantitative and a qualitative assessment.

In terms of the quantitative extent of the changes to the originally approved development, the works which are the subject of the application are minor and do not inherently alter the nature and form of the subdivision as originally approved by Council.

The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally as approved, for the same purpose and with no substantive modifications to the physical appearance of the approved development.

Consistent with the Court decision in **Moto**, the Council would be satisfied that the development as modified would remain essentially or materially the same as the approved development.

This Court decision also makes clear that the Council has the power to approve the Modification Application.

The proposed modification is justified on the basis that:

- The proposed works are generally consistent with the application as initially lodged and as detailed under the original Notice of Determination dated 22 December 2021.
- The proposal is “substantially” the same development, as defined by the Environmental Planning & Assessment Act.

Council’s support of the modification to the form of the proposed development is sought in this instance.

Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

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