

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0039
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot CP SP 31058, 11 Victoria Parade MANLY NSW 2095 Lot 1 DP 77358, 9 Victoria Parade MANLY NSW 2095
Proposed Development:	Modification of Court Consent DA0220/2013 under s4.56 of the EP&A Act, granted for demolition works, construction of a mixed use development and strata subdivision
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Cecil George Koutsos Isabel Brenda Koutsos
Applicant:	Ces Koutsos
Application Lodged:	16/02/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	03/03/2021 to 02/04/2021
Advertised:	03/03/2021
Submissions Received:	21
Clause 4.6 Variation:	4.3 Height of buildings: ('Section 4.56' of the Act negates Clause 4.6) - variation 52.2% and 6.16 Zone B2 Gross floor areas per Cl4.4 FSR ('Clause 4.56' of the Act negates Clause 4.6) - variation 28.8%
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal is for a modification of development consent DA220/2013 granted for demolition and construction of a 7 storey mixed use building, approved by the NSW *Land and Environment Court* (LEC). The proposal seeks to further increase the existing height non-compliance up to a maximum of 52.2% (lift overrun) and has received more than 10 objections to the 'Section 4.56' modification application.

The modified proposal seeks to increase the overall height by an additional 1.25 metres (m) compared to the approved building profile, in addition to a range of changes to the layout of all residential floors, external restyling and materiality, basement and ground level. Overall the impacts on views, overshadowing, privacy, streetscape and associated amenity / environmental considerations under the Manly Local Environmental Plan (LEP) and Development Control Plans (DCP) are substantially the same as the originally approved development. The modification does not significantly depart from any existing conditions or reasons for approval by the NSW LEC.

The principal concerns raised in public submissions relate to privacy, solar access, natural airflow, views, construction activity, dilapidation, height, bulk, property values and compliance with the *Apartment Design Guide*. Subject to conditions, the modification addresses these issues and satisfies internal referral requirements of Council. Modified conditions are provided where appropriate to address issues raised in the public interest.

The modified application is considered to be consistent with the objectives of Clause 4.3 Height of Buildings and Clause 4.4 / 6.16 Floor Space Ratio / B2 Gross Floor Areas, including associated amenity considerations, to support the variation to building height and change in FSR as assessed and detailed on the amended plans, dated 21.4.2021 (Revision 4), drawn by Platform Architects. The height variation proposed is supported pursuant to "Clause 4.56" of the Act and relevant considerations as a Modification of development consent.

The modified scheme has satisfactorily addressed the assessment considerations under the Manly LEP and DCP, including matters raised by Council's *Design and Sustainability Review Panel* by way of amended plans dated 21.7.2021 (Revision 4) and the modification can be supported, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application is a Section 4.56 modification to a development consent for DA220/2013 granted for demolition of existing buildings and the construction of a new 7-storey mixed-use building. The determination of DA220/2013 was made pursuant to Section 34(3) of the *Land and Environment Court Act 1979* under Proceedings No.2014/010557.

Specifically, the modifications can be summarised as follows (full details are depicted on drawing 'Revision 4' (and 'Revision 2' where no amendments were made during the assessment period, e.g basement):

Second Basement Plan - New level (RL-2.32)

- This new basement level is accessed from the basement level above and contains 12 resident car parking spaces and storage areas for the residential apartments.
- A lift and stair core provides access to the levels above.

First Basement Plan (RL1.43 approved at RL1.0)

- This reconfigured basement level is accessed from Victoria Parade via a ramp and driveway located adjacent to the western boundary. This level contains 8 resident and 3 visitor car parking spaces, including 2 accessible spaces, and storage areas for the residential apartments.
- A lift and stair core provides access to the levels above and below.

Ground Level Floor Plan (RL4.75 approved at RL5.3)

- The reconfiguration of this floor plate to include two (2) retail tenancies facing the street, incorporating the retained heritage building, and two (2) commercial suites at the rear of the property. These 4 tenancies provide for a total of 285.3m² of non-residential floor space.
- A centrally located residential lobby.
- Access to separate residential and commercial waste storage areas via a pathway down the eastern boundary of the property.
- Lift and stair access are provided to the levels above and below.

First Floor Plan (RL8.15 approved at RL8.1)

- This reconfigured floor plate contains the living areas of 4 split-level north facing apartments and 2 x 1 bedroom south facing apartments.
- Lift and stair access are provided to the levels above and below.

Second Floor Plan (RL11.25 approved at RL11.0)

- This reconfigured floor plate contains the bedroom areas of 2 x 1 bedroom and 1 x 2 bedroom split-level north facing apartments accessed from the floor level below, 1 x 1 bedroom apartment and the bedrooms of a 2 bedroom south facing apartment accessed from the level above.
- Lift and stair access are provided to the levels above and below.

Third Floor Plan (RL14.35 approved at RL13.9)

- This reconfigured floor plate contains 2 x 2 bedroom north facing apartments, 1 x 1 bedroom south facing apartment and the entrance and living areas associated with a split-level 2 x bedroom apartment with bedrooms at the level below.
- Lift and stair access are provided to the levels above and below.

Fourth Floor RL17.45 to Sixth Floor Plans RL23.65 (approved at RL16.8 to RL23.9)

- These reconfigured floor plates each contain 2 x 2 bedroom apartments.
- Lift and stair access are provided to the levels above and below.

Roof level Parapet (RL26.95 approved at RL25.7)

- Increased overall height of 1.25m (plus lift overrun RL27.39).

(Note: The submitted plans (Revision 2 - Jul 2020) and now with amended plans (Revision 4 dated 21.7.2021) show a reduction in units and (modification) building height with selected window, balcony and wall changes during the assessment period as shown on the Architectural plans, prepared by *Platform Architects*.)

Ancillary modifications to the Approved Plans include:

- A revised landscape planting plan,
- A revised stormwater management plan

- A revised scheme for external materials and finishes.
- Increase site excavation for basement and ancillary site works including retention of heritage portion of front section of No.11 Victoria Pde.

The proposed changes to conditions proposed by the applicant include:

1. *ANS01 – No longer applicable as the façade has been amended.*
2. *ANS13 – The design has changed and there is no longer an access door in that locate. Delete condition.*
3. *ANS15 – Geotechnical report reference to be updated.*
4. *DA1 to be modified to include the new drawings, plans and reports.*
5. *Condition 5 and 26 to be deleted. Façade has been changed and brickwork nominated.*
6. *Condition 24 – Delete the words “nominated or approved by Council”.*
7. *Condition 26 – External colour schedules are provided in the new design. Delete Condition.*
8. *Condition 32 – An amended BASIX is included in this submission – Delete Condition*
9. *Condition 43B to be modified to reflect new configuration and commercial floor areas.*

A summary table of the development scheme description changes is provided below:

Characteristic	Approved DA220/2013	Modification MOD2021/0039
Height in Storeys	7 storeys plus 1 basement level with car stackers used for residential Units	7 storeys (ground level (1) commercial retail with 6 levels of residential above plus 2 basement levels (split levels) with no car stackers
Total apartments	17	15 (amended from 17 Units during the MOD assessment period)
Retail / Commercial	1 x Commercial 2 x Retail Total 345sqm	2 x Commercial 2 x Retail Total 302.3sqm
Gross Floor Area	1,728.6sqm	1,682.5sqm
FSR	3:1	2.92:1

Note: For the purpose of the Modification assessment elements where there is no relevant change or the matter is not an assessment element no further detailed assessment is required, noting that those elements are approved to remain in the same position. (For example where a wall line is the same along a solid boundary wall - see the red shaded overlay on the Plans A1.00 to A1.09).

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
Assessment - Nominated Integrated Development – WaterNSW - Water Management Act 2000 (s91 Permit for Temporary Construction Dewatering)

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.13 Design excellence

Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)

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 - 3.7 Stormwater Management

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

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2

Manly Development Control Plan - 4.2.5.1 Design for Townscape

Manly Development Control Plan - 4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre

Manly Development Control Plan - 4.4.1 Demolition

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot CP SP 31058 , 11 Victoria Parade MANLY NSW 2095 Lot 1 DP 77358 , 9 Victoria Parade MANLY NSW 2095
Detailed Site Description:	The subject property is legally described as Lot 1 in DP 77358, No. 9 Victoria Parade and SP 31058, No. 11 Victoria

Parade, Manly. The properties are located on the northern side of Victoria Parade between Darley Street and East Esplanade. The consolidated allotment is rectangular in shape having frontage of 18.93 metres, variable depth of between 30.48 metres (m) and 30.56m and a total site area of 576.2 square metres (sqm). The allotment is generally flat and devoid of trees or natural landscape features.

The area is characterised by a diverse mix of multi storey residential buildings and small scale commercial buildings of various ages and architectural styles indicative of changing development pressures on the area and the evolution of built character. Victoria Parade is a wide street with angled parking, lined in part with Norfolk Island Pines growing within the road reserve. Victoria Parade extends from the Ocean Beach at South Steyne and the Harbour Beach at East Esplanade and contains a mix of apartment buildings, retail space, Manly Public school and mixed use buildings. The subject land contains a heritage item and various heritage items are also listed adjacent, including "Beverley Towers" (No.13 Victoria Parade) and street elements.

Immediately to the west of the subject site is a seven storey, concrete framed residential building of no heritage value. Along the street frontage views are gained along the axis of Victoria Parade toward Manly Beach and the Harbour. To the rear of the site is a 7 storey commercial building with frontage to Darley Road impacts on solar access and surrounding amenity due to its glass clad bulk and height. No.2-4 Wentworth Avenue multi storey building which contains numerous apartments that face the rear boundary of the subject site, with views toward "St Patricks Estate".

Map:



SITE HISTORY

Development Application No.DA220/2013 - for demolition works and construction of a mixed use building comprising basement carparking, ground floor commercial / retail with 6 levels of residential apartments above was refused by Council (Manly Independent Assessment Panel) on 17 April 2014. The applicant lodged an Appeal with the NSW LEC on 29 July 2014 under proceedings No.2014/0010551. The NSW LEC granted approval to an amended scheme, subject to conditions on 13 August 2015.

Modification Application No.MOD2018/0222 - to modify DA220/2013 sought to demolish, then reconstruct the section of heritage building on No.11 Victoria Parade and delete the associated conditions of consent affecting that part of the building to be left in situ. The modification was refused by Council on 15.8.2018.

Review Application No.REV2018/0019 - for a Review of the Determination of the decision to refuse MOD2018/0222 was withdrawn by the applicant on 29 October 2018

Prelodgement Meeting No.PLM2019/0291- was held with Council on 23 January 2020 seeking advice regarding the current modification proposal. In summary, the PLM advised that the modification were appropriate to be considered under 'Section 4.56' of the Act. However, the principal amenity issues relating to view loss, privacy, solar access, heritage, streetscape and building height impacts were a concern. PLM notes are attached to this report.

Design and Sustainability Advisory Panel - The current Modification Application was considered by the DSAP on 29 April 2021. In response to the DSAP advice and referral issues the applicant made amendments to selected elements of the plans, including revising the number of apartments to 15, revising the building height / floor levels, revising the external materials and balcony terrace shape as detailed on the modification plans dated 21 July 21. Additional details were also provided regarding solar access, views, privacy and selected elements with regard to assist in the assessment of those issues. (See details under the heading 'Internal Referrals' and 'Part 3 Manly DCP' within this report.)

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 DA220/2013, in full, with amendments detailed and assessed as follows:

- The proposed mixed use with basement parking, ground floor commercial and less residential apartments (now 15) above remains.
- The approved general building form, footprint, setbacks, car parking and drainage circumstances are not significantly altered. In this it is assessed that there is some minor outward changes but essentially marginal and are combined with other 'inward' changes to balance the design changes with a view to improving internal amenity without any significant loss of amenity to adjacent properties / apartments.
- The proposal maintains a complimentary and compatible streetscape presentation by way of the amended plans and revised finishes schedule.
- The modifications maintain the previously approved heritage conservation outcomes and residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk, overshadowing and view sharing to being essentially and materially similar.

Section 4.56 Assessment

The relevant matters for consideration under Section 4.56 of the EP&A Act are:

Section 4.56 - Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA220/2013.</p> <p>The applicant provides that the modifications maintain substantially the same development and consistency with the reasons for approval original granted:</p> <ul style="list-style-type: none"> ▪ <i>The application provides for superior streetscape, residential amenity and broader urban design outcomes on this particular site. The modified scheme exhibits design excellence.</i> ▪ <i>The proposal maintains the general massing of the approved development in relation to heights and setbacks with the approved residential density not altered as a consequence of the modifications sought.</i> ▪ <i>The proposed building height, as modified, continue to satisfy the objectives of the standards and accordingly strict compliance is unreasonable and unnecessary under the circumstances.</i> ▪ <i>Being compliant with the FSR standard the proposal provides for the contextually appropriate distribution of floor space on this particular site.</i> ▪ <i>The proposed development does not compromise the heritage conservation outcomes achieved through approval of the original application.</i>

Section 4.56 - Other Modifications	Comments
	<p>▪ <i>The proposed development, as modified, will not compromise the residential amenity afforded to surrounding development through approval of the original scheme in terms of privacy, solar access and view sharing.'</i></p> <p>The primary change to building height is not obliged to be subject to detailed evaluation pursuant to strict mechanisms of "Clause 4.6". In this regard change in building height by modification is assessed on merit and the amended plans dated 21 July 2021 apply as additional revisions made by the applicant to reduce the building bulk / height and accommodate DSAP / assessment considerations.</p> <p>The proposed modifications are also able to be addressed by amended conditions and in context with the original reasons for the granting of development consent to DA220/2013. (See NSW LEC Proceedings No.2014/0010551)</p>
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</p>	<p>Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA220/2013.</p>
<p>(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.</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>

Section 4.15 Assessment

In accordance with Section 4.56 of the EP&A Act, in determining an modification application made under Section 4.56, 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial and residential purposes for an extended period of time, with no uses that would be likely to give rise to any contamination. The proposed development modification proposes mixed commercial/residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application and the modification (including amended plans).</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. During the assessment process, the plans were amended in response to the <i>Design and Sustainability Advisory Panel</i> review of the plans. Other amendments were also made in response to considerations for ancillary matters and minor changes to address the ADG and internal amenity. Pursuant to the <i>Community Participation Plan</i> the amended plan were made publicly viewable via Council e-services and notification was sent to all submitters to MOD2021/0039 to inform them of the amended plans. No objections were withdrawn. All submissions with the modification have been considered and submissions within the original DA reviewed as part of the overall context of the modification plans. (Detailed site inspections for the modification application were conducted prior to the amendments (21 July 2021) being notified, and before the increased CV19 restrictions).</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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 in the original consent. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original 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) 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. The modification does seek any change to conditions relating to threatened species or not create any impacts on threatened species habitat, including Bandicoot and Penguin breeding areas.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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	<p>The site is considered suitable for the proposed modifications to the development. The modifications are influenced by a holistic review the approved design depicted in the set of drawings by <i>Blackmore Design Group</i>, "revision S34(C)", in terms of constructability (this include basement civil engineering), apartment amenity and architectural look of the proposal and subsequently to seek to modify the approval as part of the S4.56 process.</p> <p>In addition Council's <i>Design and Sustainability Advisory Panel</i> have reviewed the modification application with respect to suitable design changes that the applicant has also addressed.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 'Matters for Consideration'	Comments
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. Issues of solar access, views, dilapidation, bulk, heritage, stormwater, visual appearance, traffic, construction and the like have been address within this report or under the original Court conditions, modified plan and modified conditions. Modification conditions are recommended where appropriate to ensure impacts of views, height, overshadowing, privacy, natural light and residential amenity are minimised as part of the modification changes.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/03/2021 to 02/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 21 submission/s from:

Name:	Address:
Caroline Bussell	6 / 36 East Esplanade MANLY NSW 2095
Mr Geoffrey Stuart Austen	13 / 5 - 7 Victoria Parade MANLY NSW 2095
Mr Soffiati Andrea	218 / 2 Wentworth Street MANLY NSW 2095
Mr Jean-Baptiste Giustiniani	18 George Street MANLY NSW 2095
Ms Diana Phyllis Williams	10 / 5 - 7 Victoria Parade MANLY NSW 2095
Mr Gilmore James McLachlan	6 / 5 - 7 Victoria Parade MANLY NSW 2095
Mrs Bronwyn Margaret Bennett	1 / 5 - 7 Victoria Parade MANLY NSW 2095
Ms Mika Margrete Paech	23 / 8 Victoria Parade MANLY NSW 2095
Mr Robert Geoffrey Tuckerman	1 / 5 - 7 Victoria Parade MANLY NSW 2095
Mr Terrence Robert Samuel	8 / 5 - 7 Victoria Parade MANLY NSW 2095
Dan Brindle	PO Box 438 BROADWAY NSW 2007
Proprietors of Strata Plan 13941	13 Victoria Parade MANLY NSW 2095
Mr Ryan Peter Waters	2 / 13 Victoria Parade MANLY NSW 2095
Ms Fiona Lee Richardson	203 / 2 Wentworth Street MANLY NSW 2095
Joshua Thomas Jackson	6 / 13 Victoria Parade MANLY NSW 2095
Withheld	MANLY NSW 2095

Name:	Address:
Tomasy Planning Pty Ltd	1073 Pittwater Road COLLAROY NSW 2097
Sanalb Pty Limited	PO Box 318 TERREY HILLS NSW 2084
Mr Lionel Henry Dooley	C/- Bergelin Estate Agents Ground Floor 4 Belgrave Street MANLY NSW 2095
BBC Consulting Planners	Level 2 55 Mountain Street BROADWAY NSW 2007
Withheld	MANLY NSW 2095

In considering Public submissions, the modification has also been considered in context of the original development application submissions, available site photos, plans and supporting information. Specific submissions on the modification have been considered where relevant, with issues summarised and addressed below:

1. **Privacy (visual & acoustic)**
2. **Solar access**
3. **Airflow**
4. **Views**
5. **Construction impacts**
6. **Dilapidation risk**
7. **Height variation and building bulk**
8. **Property devaluation**
9. **Building DCP and ADG compliance**
10. **Traffic congestion**
11. **Street parking**
12. **Plan information**

The matters raised within the submissions are addressed as follows:

- **1. Privacy**

Concerns were raised regarding visual privacy and acoustic privacy for adjacent property in general, and in particular from No.2 Wentworth Street, 13 Victoria Parade and No.5-7 Victoria Parade.

Comment:

From the original DA the modification application to change selected windows, and wall sections, include further details for privacy screening and make selected balcony changes as part of the overall changes and restyling of the building. Visual and Acoustic privacy is assessed in detail under the heading "Apartment Design Guide and Part 3.4.2 of the Manly DCP within this report. In addition, concerns regarding mechanical plant impacts are addressed by conditions to ensure compliance with Australian Standards and National Construction Code / Building Code of Australia requirements to ensure appropriate walls / glazing thickness for residential noise protection.

In summary, the modification plans have maintained the use of planter boxes and screening devices where appropriate to address this issue. Windows that are close to side boundaries are generally limited to bedroom windows / bathroom or studies, with high sills, fixed glazing section and screening devices where appropriate. The modification application maintains acceptable levels of privacy treatment including balcony positions / shape for the building, subject to

conditions where identified there can be additional amenity factors (such as views, light / air wells, spatial separation concerns). The modification remains substantially the same with regard to acceptable privacy and acoustic impacts for surrounding residential premises for the urban environment. This issue does not warrant refusal of the modification application.

- **2. Solar access**

Concerns were raised with respect to solar access to adjacent property in general and in particular No.13 Victoria Parade, No.5-7 Victoria Parade and buildings opposite the site on the southern side of Victoria Parade.

Comment:

The shadow diagrams demonstrate that there would have been no unreasonable additional overshadowing to adjacent apartments between 9am and 3pm on June 21. This includes consideration of the change height and reshaping of the building and shadow case southwards across Victoria Parade.

The modification plans maintain a simple roof format and building profile to assist in minimising any impacts on solar access toward adjacent apartments and private open space. Detailed merit consideration of this issue has been made under the relevant headings within the Manly DCP *Section 3.4.1 Sunlight Access* within this report and the *Apartment Design Guide*. In this assessment consideration has been given to optimising natural light for the light wells, spring / autumn solstice and sunlight late or early in the day. Overall the proposal is consistent with DA220/2013 regarding solar access and the shadow regime is substantially the same between 9am and 3pm on 21 June.

This issue does not warrant refusal of the modification application.

- **3. Airflow**

Concerns were raised that the height of the proposal would block airflow and breeze to adjacent apartments where existing windows are close to the side boundaries.

Comment:

The modification application maintains similar wall alignments where close to the side boundaries (i.e within 2.0m) to the scheme under DA220/2013 as approved by the *NSW Land & Environment Court*. This issue does not warrant refusal of the modification application.

- **4. Views**

Concerns were raised in respect to view loss / additional view impact.

Comment:

This issue has been assessed in detail under Clause 3.4.3 *Maintenance of Views* of the Manly DCP in this report and the applicant has provided a suitable view analysis. In summary, the proposal is considered to achieve the objectives for view sharing under the DCP, and no unreasonable impact is created in context of the design, views and density of the urban surroundings, subject to conditions to address a particular concern around the podium level. In summary, this issue has been addressed by the lower building height and does not warrant refusal of the modification application.

- **5. Construction impacts**

Concerns were raised with respect to the construction activity impacts of noise, dust and traffic during construction phase.

Comment:

Standard conditions of consent will be applied in relation to construction hours and noise to manage expected activity as a consequence of the construction and building processes associated with the development. Security fencing during construction will maintain safety and the building modifications are considered to be acceptable design for "*Crime prevention through environmental design guidelines*". Existing conditions (as per DA220/2013) require preparation and implementation of a *Construction Traffic Management Plan*, compliance with the Protection of the Environment Operations Act, site management requirements and defined work / delivery hours for the duration of the works. Subject to these conditions that are unchanged to address this issue, the modification is considered acceptable and does not warrant refusal of the application.

- **6. Damage to neighbouring property**

Concerns were raised that the excavation risk, demolition and construction could result in damage to neighbouring property, including adjacent building assets.

Comment:

The Geotechnical Report provided with the modification application (Project 2013-141.2 dated September 2020, prepared by *Crozier Geotechnical Engineers*) recommends specific protection measures to ensure safe excavation and support. DA220/2013 includes a variety of conditions to ensure dilapidation risks are appropriately managed, including demolition, bulk excavation and potential dewatering for the basement. This issue does not warrant refusal of the modification application as the basement layout and associated impacts are consistent with the original development assessment to be managed during works. In this regard, conditions will require that all recommendations of this report are carried out and as per DA2020/0634. Subject to conditions the modification is considered acceptable and does not warrant refusal of the application.

- **7. Height variation increase**

Concerns regarding the proposed non-compliant height of the development and further increase to that already approved by the NSW Land & Environment Court.

Comment:

This issue has been assessed in detail under Clause 4.3 of the MLEP in this report, in context to the adopted approach by the NSW LEC that Clause 4.6 (formerly SEPP 1) does not apply to a modification of consent, however a detailed merit assessment of the development standard is made pursuant to building height objectives and zone.

This issue has been addressed by the amended plans (dated 21 July 2021) and supporting reasons in the written request provided by the applicant, including relevant considerations under the Manly DCP. In terms of some specific elements of the building, whereby all floors have increased in height conditions are recommended to assist with optimising natural light by selected minor changes to the outer building elements. In summary, the amended building height variation is supported and does not warrant refusal of the modification application.

- **8. Property devaluation**

Concerns that the development will affect adjacent property values by depreciation from the impacts of the new building on surrounding land.

Comment:

This issue is not a matter that cannot be reasonably validated and land value market considerations are not relevant to the environmental planning assessment process. This issue does not warrant refusal of the modification application.

- **9. Building DCP/ Apartment Design Guideline**

Concerns were raised in relation to the proposed being bulk and of scale and design that does not comply with the ADG and DCP / LEP numerical controls.

Comment:

This issue has been assessed in detail under the heading SEPP 65 within this report. In summary, the bulk and scale and ADG requirements are considered to have been adequately addressed. The revised setback for each level and built form controls of the DCP in relation to the modification are outlined in the "Built Form Controls" table heading within this report. In summary, the proposal is satisfactory on merit consideration of the changes applied to the building design with regard to the DCP (subject to conditions) for the modification application.

- **10. Traffic impact / congestion**

Concerns that the development will affect traffic flows during construction and increase overall traffic in the vicinity of the site.

Comment:

The modification has been assessed by Council's Traffic Engineer. Existing conditions of consent require a traffic management plan and specific permits if required for street construction permits / hoardings during works. The modification application reduces the overall number of apartments but maintains the same net parking for the development. Therefore, the traffic impact is substantially the same as approved and this issues does not warrant refusal of the modification.

- **11. Car parking**

Concerns that the modification will impact available street parking (including the Permit Scheme) and there is insufficient on-site parking.

Comment:

The modification has been assessed by Councils Traffic Engineer and is also addressed in detail under *Clause 4.1.6 Parking, Vehicular, Access and Loading* within this report. Overall the same net amount of parking is provided, however following amendments a condition is recommended to ensure adequate provision of bicycle parking, disabled persons parking and suitable arrangement in the basement layout for efficient access. The modification proposal has reduced the number of apartments and therefore provides a better carparking balance for the development than that approved with DA220/2013. This issue does not warrant refusal of the modification application.

- **12. Plan inaccuracies / details**

Concerns that some details on the plans are inaccurate or are drafting errors on which therefore cannot be relied on for amenity impacts on No.13 Victoria Parade.

Comment:

The plan inaccuracy / detail for window elements identified does not materially affect the overall

scheme or impact with regard to compliance and DCP / LEP. However, the issues associated have been considered and are identified to ensure they are understood to ensure a balanced assessment. In additions to the assessment report having factored in this issue, the applicant has provided the following details response:

"Firstly we acknowledge there is a window on the survey plan, to the neighbouring apartment building that does not exist. We have reviewed the amenity impacts to that apartment and as demonstrated in the shadow diagrams provided, the overshadowing to that facade is caused by the taller commercial building at 22 Darley Rd and the proposed development subject of this modification is not impacting their solar amenity. However - as part of the revisions issued to council, we have increased the setback to the level 4 planters and balustrades in order to increase the separation between the two buildings at that level.

Secondly, In relation to the angled pop out to Bed 1, Apt 04 - the increase in the building envelope of 290mm (at the northern end of that wall) allowed for the deletion of the window to the eastern facade of that bedroom, and replace it with a window facing north. We believe this creates a better amenity outcome for both the subject property and the neighbouring property to the east as it reduces any privacy impacts to the living room and bedroom windows of the neighbouring building. As per the first point, this pop out does not impact the solar amenity of the neighbouring apartments.

Finally, we would request that any further increased setback to the terraces of level 4 be dealt with by way of a condition of consent."

This issue has been addressed does not warrant refusal of the modification application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>Supported with no condition changes.</p> <p><u>General Comments</u> Conditions relating to Acid Sulfate Soils were set in a <i>Local and Environment Court</i> judgement in 2015. From that document, ANS15 is satisfactory to be apply to the modified development, whereby, testing will be done for Acid Sulfate Soils after demolition of existing structures, and an Acid Sulfate Soils Management Plan to be implemented where applicable.</p> <p>No new conditions recommended.</p> <p><u>Planning Comment:</u> Comments and modified conditions from Environmental Investigations are concurred with and applied as appropriate.</p>
Landscape Officer	<p>Supported with modified conditions.</p> <p>Landscape plans prepared by <i>Paul Scrivener Landscape Architect</i> are noted.</p>

Internal Referral Body	Comments
	<p>The proposed planting is considered to be achievable and able to be maintained to provide amenity to residents and adjoining properties. Architectural/sculptural small trees include frangipani, dracaena and slender weavers bamboo and screen hedging includes Lilly Pilly.</p> <p>No objections are raised to approval subject to conditions as recommended.</p> <p><u>Planning Comment:</u> Comments and modified conditions from the Landscape Officer are concurred with and applied as appropriate.</p>
NECC (Development Engineering)	<p>Supported with modified conditions.</p> <p>Development Engineering has no objection to the application. The conditions ANS08, 15, 16, 20, 79 and 80 of the original consent are to be removed and replaced by modified conditions.</p> <p><u>Planning Comment:</u> Comment and conditions from Development Engineering are concurred with and modified conditions applied. Discussion with Development Engineering do not recommend any change to the engineering Works bonds or engineering Security bond conditions.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported with no condition changes.</p> <p>A small part of the property is affected by the Low Flood Risk Precinct, but the property is outside of the Flood Planning Area. No flood related objections.</p> <p><u>Planning Comment:</u> No comment or condition change required.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>This application has been referred to Heritage, as the site contains a listed heritage item, being item I239 - Residential flat building at 11 Victoria Parade, and is located within the Manly Town Centre Conservation Area, listed in Schedule 5 of Manly Local Environmental Plan 2013. The site also adjoins a heritage item I240 - Commercial and residential building at 13 Victoria Parade and is within the vicinity of heritage listed items:</p> <p>Item I247 - Manly Village Public School - Wentworth Street (corner of Wentworth Street, Darley Road and Victoria Parade)</p> <p>Item I238 - Street trees - Victoria Parade</p> <p>Item I117 - Cast iron letter receiver (letter box) - Corner Darley Road and Victoria Parade (footpath)</p>
	Details of heritage items affected

Internal Referral Body	Comments
	<p>Item I239 - Residential flat building <u>Statement of significance:</u> "De Ville" is a residence reflecting another phase of development and the growth of Manly following WWI. It is one of the few remaining small scale residential buildings in Victoria Parade and contributes to the remnant historic streetscape. <u>Physical description:</u> Unusual brick and rendered 2 storey terracotta clad hipped roof residential building. Features prominent verandahs to ground and upper levels with rendered detailed spandrel and tapered timber posts. The eaves are boxed and the upper level verandah beam has detailed ends. The residence, possibly now apartments. The front façade now has bay windows although the entrance is typical of the Victorian style.</p> <p>Manly Town Centre Conservation Area <u>Statement of significance:</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p>I240 - Commercial and residential building <u>Statement of significance:</u> The building is noted as having historically, aesthetic, technical/research and representative heritage value to the Manly area. The building is considered to be one of the most substantial innovative and prominently located combined residential and commercial buildings built during the pre-World War II boom in Manly flat buildings. The Art Deco Style building is of interest as a representation of 1930s mixed-use development. Further information could be yielded about the role and history of motor vehicle industry during this era as well as the eventual demise of independent service stations in metropolitan Sydney. Further details may also be yielded regarding the original garage design and any technical concessions to create the mixed-use development. <u>Physical description:</u> The property at 13 Victoria Road is a 3 storey brick J shaped building, with a flat-roofed component to the rear, that may be a later addition. The building is consistent with the Inter-War Art Deco</p>

Internal Referral Body	Comments																					
	<p>style and has a red tiled hipped roof, wide overhanging boxed eaves and timber sash windows.</p> <p>Item I238 - Street trees <u>Statement of significance:</u> Historical line of HG Simth's intended Victoria Park. Aesthetic. <u>Physical description:</u> Norfolk Island Pines on both sides of road planted in carriageway.</p> <p>Item I117 - Cast iron letter receiver (letter box) <u>Statement of significance:</u> The historic cast iron letter receiver (or letterbox) is of significance of Manly Council area for historic, aesthetic and social reasons and as a representative example of a now rare and defunct way of providing this important public service. The letterbox is a fine example of historic craftwork that adds value to the streetscape and strongly contributes to the community's sense of place.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? Yes Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> <p>Consideration of Application This application seeks consent for modifications to the Development Consent - DA 220/2013 approved by LEC in August 2015, including an increase to the overall building height, new facade treatment and reconfiguration to the apartment layouts.</p> <p>The proposal also includes the demolition and reconstruction of the retained section of the heritage item at 11 Victoria Parade. It is considered that the information provided with the application is not sufficient to justify the requirement for demolition.</p>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
Other relevant heritage listings																						
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																					
Australian Heritage Register	No																					
NSW State Heritage Register	No																					
National Trust of Aust (NSW) Register	No																					
RAIA Register of 20th Century Buildings of Significance	No																					
Other	N/A																					

Internal Referral Body	Comments
	<p>It is noted that the current proposal is bulkier than the approved DA, therefore, a reduction to the bulk and scale of the proposed building and a further setback from the retained front section of the heritage listed item is required.</p> <p>The visual impact of the proposal upon the nearby heritage items is considered overwhelming as currently presented. Heritage requires the retention of an appropriate visual setting, that currently contributes to the significance of the Manly Town Centre Conservation Area.</p> <p>Therefore, Heritage can not support the application in its current form.</p> <p>Revised Heritage Referral Comment - Amended Plan dated 21.7.2021</p> <p><i>"I have reviewed the heritage referral, MOD application and the original court approved plans.</i></p> <p><i>I agree that the height and bulk of the MOD is a concern and impacts not only on the heritage listed building (De Ville) but the listed commercial and residential building sited at 13 Victoria Parade and the general streetscape of the locality.</i></p> <p><i>I recognise that the MOD does provide some additional space and opening up at ground level near the heritage item as a consequence of the glass curved building line at Retail no.1. However I am concerned that the additional height and curved design of the balconies, especially at level 1 and 2 overwhelm the heritage item at the streetscape level. Preference is not to approve the additional height and for a simplified balcony structure to be provided at the first and second level to complement the heritage building façade and balconies."</i></p> <p>The heritage team have advised that a condition is recommended to require the adjustment of the balcony corners and inner curved corner adjacent to the heritage item. This has been included as proposed condition 43H.</p> <p><u>Planning comment</u> The heritage issue above have been discussed with Council's Heritage planner regarding the shape and height of the balcony levels</p>

Internal Referral Body	Comments
	<p>at the front next to the heritage building element. This can be addressed by a suitable condition for approval, as recommended by the heritage team, to adjust the balcony corners and inner curved corner adjacent the heritage elements retained, in order to provide a more sympathetic connection between the two components at the new lower floor height levels.</p> <p>The applicant's expert heritage consultant addressed the DSAP Panel in relation to heritage considerations in context of the modification plans. (See DSAP comments under Internal Referrals). The heritage components of the front section of No.11 Victoria Parade are to be conserved and heritage conservation conditions remain intact as per the NSW LEC court approval. While there will be renovation work to parts of the building section being retained the heritage component to be conserved in substantially the same as per DA220/2013 required by the Court approval. Note: Conditions of consent override notations on the plans to accommodate with the Construction Certificate / demolition works.</p> <p>It is recognised that the modification application does provide some additional space and opening up at ground level near the heritage item as a consequence of the glass curved line at Retail no.1 and this is an acceptable transparent element. Heritage concern is that the additional height and curved design of the balconies, especially at level 1 and 2 overwhelm or mismatch the heritage item wall shape at the streetscape levels 1 & 2. Now that the additional proposed overall height has been reduced in height with the amended plans (see "Montage 1 Issue 3") with less bulky upper levels, a simplified balcony structure and inner (centre wall) corner on L1 and L2 at the front will address a more sympathetic join between heritage building façade and adjacent front levels / front wall corner shapes.</p> <p>Revised comments from Heritage are concurred with and an appropriate condition is recommended. The change to the balcony / centre wall corner is minor and only affects the shape of the corner piece (not the whole balcony alignment / angle) on L1 and L2 at the front.</p>
Strategic and Place Planning (Urban Design)	<p>Urban Design Referral considerations are assessed as part of the DSAP review. (no conditions were provided by Council's Urban Design referral)</p> <p><u>DSAP COMMENTS AND RECOMMENDATIONS</u> <i>On 13 August 2015 the NSW LEC granted approval for demolition and construction of a residential flat building with commercial floor space, strata and stratum subdivision subject to Plan Reference "Option A Revision S34(C)".</i></p> <p><i>This is a section 4.56 application to a Land and Environment Court approved DA for a mixed-use development on this site.</i></p>

Internal Referral Body	Comments
	<p><i>The modification involves the introduction of an additional level of basement to facilitate the removal of the approved mechanical car stacking system, an increase in the residential floor to floor heights to 3.1 metres and a corresponding increase in overall building height, the redistribution / redesign of floor space and associated reconfiguration of apartments and enhancements to the façade materiality and detailing to provide enhanced design quality and broader urban design outcomes.</i></p> <p><i>The project consists of two levels of basement car parking with two retail and two commercial units at ground level and six levels of residential above that.</i></p> <p><i>The primary changes to the approved DA is an increase in height of 1.5 m plus lift overrun and a change in the massing of the built form. The change has resulted from the conditions of the Consent Condition in relation to a diagonal view corridor from the rear neighbour and the inability to accommodate the required floor to floor heights allowing for structural considerations. In terms of the building massing, a more compact round cornered tower is proposed. It allows view corridors from neighbouring multi-unit residential buildings from the north west predominantly - 13 East Esplanade. The proposed new building form is an elegant, low impact response to its context whilst providing an acceptable interior amenity for the proposed apartments.</i></p> <p>Approach <i>Generally the Panels comments would follow the design criteria set out in the ADG, however in this circumstance it will be more useful and direct to address the impacts, benefits or dis-benefits of the proposed changes set out above.</i></p> <p><i>The principal concerns relate to privacy, overshadowing, relation to the streetscape and impact on views.</i></p> <p>Views <i>Whilst it is difficult to assess the implications of the proposed changes, it appears they are acceptable, and in some cases, enhance neighbours' amenity. View corridors from 5-7 Victoria Parade, 23 Wentworth Street and 13 East Esplanade appear to improve due to the increased boundary setbacks but this varies depending on the height being considered. The 3100 floor to floor dimension is an adopted standard under the ADG so it can only be assumed that the original DA was deficient in terms of its allowance for structure and building services. The proposed floor to floor heights are not excessive but necessary to ensure 2700 floor to ceiling minimums in the habitable spaces.</i></p> <p><u>Recommendation/panel conclusion</u> 1. The Panel has reviewed the visual analysis and consider the additional height to have negligible additional impact on view from the points identified.</p>

Internal Referral Body	Comments
	<p>Overshadowing <i>The shadow diagrams reveal there is slightly more shadow cast by the proposed but it is minimal and only between 10-12 noon in mid-winter compared with the original LEC approved DA. It appears that the required 2hr of sun is maintained to the neighbouring residential apartments.</i></p> <p><i>While it's difficult to fully grasp the impact of the proposed and it appears to be an acceptable alternative to the Court approval, it would be helpful if the applicant could provide a 3d Model of both the previously approved and proposed amendment so that the impact on surrounding neighbours can be comprehensively assessed.</i></p> <p><u>Recommendation/panel conclusion</u> 2. The Panel has reviewed the visual analysis and consider the additional height to have negligible additional impact on overshadowing.</p> <p>Streetscape, heritage and facade treatment <i>In terms of the relationship of the proposal to the heritage building on the subject site at Victoria Parade and the corner building, the proposed building appears acceptable. It does not defer to or imitate the heritage building at 11 Victoria Parade or the corner building on Darley Road, rather the new building has its own expression of sufficient quality to justify it. It is noted that the curved forms of the proposed new building are not entirely neutral but the horizontality of the brickwork and powder coated screens relate to the materiality and colour of the adjacent buildings.</i></p> <p><i>The proposed building is of a significantly large scale to both the heritage and corner buildings but is recessed approximately 3 metres to the side of the heritage building and significantly more from the corner building. There is sufficient space between the buildings to allow them to be read as articulated and discrete streetscape elements. The proposal is slightly higher than the MUR building to the south - 5 Victoria Parade but the recessed upper 2 floors ameliorate adverse impacts.</i></p> <p><i>Of the two schemes presented the Panel had varying views, but the final consensus was that the more solid façade with 'cut-out' balconies and window openings could present a simpler and more monolithic, but subdued facade which was preferable to the strong horizontal banding.</i></p> <p><u>Recommendation</u> 3. The Panel has reviewed the artist impressions and elevations and considers the façade approach illustrated in the 'Design for pre-lodgement meeting' to be preferable to the "proposed design".</p> <p>PANEL CONCLUSION The Panel is supportive of the proposal.</p>

Internal Referral Body	Comments
	<p><u>Planning Comment:</u></p> <p>The applicant has addressed the DSAP recommendations 1 to 3 above within the amended plans that have included reducing the floor to floor RL's and main roof building height. The modification was seeking an increase of 1.5m which is now reduced by 0.25m for the main roof and 0.35m for upper balcony roof awnings. Reshaping selected balconies to be narrower with revising the materials and finishes scheme, selected windows, planter boxes / privacy screen changes and reconfiguring the apartment mix to 15 units. Conditions are applied where appropriate with the amended plans. Note that conditions of consent override any 'notations' on the plans where there may be an inconsistency.</p>
Strategic and Place Planning (Development Contributions)	<p>Supported with conditions.</p> <p>MOD2021/0039 seeks to modify DA0220/2013 for demolition and construction of a mixed use development and strata subdivision at 9 and 11 Victoria Parade, Manly. The Land & Environment Court granted consent to DA0220/2013 on 13 August 2015.</p> <p>Conditions 43A and 43B of DA0220/2013 required the payment of the following monetary contributions pursuant to the Manly Section 94 Contributions Plan 2004:</p> <ul style="list-style-type: none"> • Residential development - \$280,000 (based on 14 additional dwellings at \$20,000/dwg) • Non-residential development - \$16,486.37 (based on 62.5sqm of additional floorspace at \$263.78/sqm). <p>This calculation credited three existing dwellings and 282.5sqm of existing non-residential floorspace. The original contribution calculation also determined that no contribution was required in lieu of car parking spaces that cannot be provided on site.</p> <p>The Northern Beaches Section 7.12 Contributions Plan currently applies to the land. Part 6.2 of this Plan states:</p> <p><i>“Development applications and CDCs that have been determined prior to this plan coming into force have been determined in accordance with the contributions plan in force at the time. These applications are subject to the rates in the now repealed plans. Any modification application will continue to be considered against the contribution plan in force at the time of the original determination.”</i></p> <p>This modification application must be assessed against the <i>Manly</i></p>

Internal Referral Body	Comments
	<p><i>Section 94 Contributions Plan</i>, in force at the time of the original determination.</p> <p>The modification application seeks to reduce the total number of dwellings (from 17 to 15 dwellings) and the quantum of additional non-residential floorspace (from 345sqm to 302.3sqm).</p> <p>The modification application is supported and will require an amendment to Conditions 43A and 43B. The contribution will be derived from the rates in force at the time of the original determination and based on the following proposed additional development:</p> <ul style="list-style-type: none"> • 12 dwellings at \$20,000/dwg (\$240,000.00) • 19.8sqm of non-residential floorspace at \$263.78/sqm (\$5,222.84.) <p><u>Planning Comment:</u> Comments and modified conditions from the Strategic (Development Contributions) are concurred with and applied as appropriate.</p>
Traffic Engineer	<p>Supported with no condition changes.</p> <p>The approved development relies heavily upon the use of mechanical car stackers to provide 17 of the 23 car spaces approved under the consent. The modification provides for an extra level of basement parking which removes the need for car stackers to be used. This is supported as it makes access to the spaces more convenient and reduces the potential for congestion in the carpark. While the quantum of parking required under DCP requirements is 25 spaces it is noted that the approved development had a parking requirement of 28 spaces and, as such, the modification reduces the parking demand.</p> <p>Having regard to the proximity of the development to public parking stations and alternative transport options (bus, ferry, ride share, car share and bicycle) it is considered that the under supply is acceptable in this instance.</p> <p><u>Planning Comment:</u> Comments and modified conditions from the Traffic Engineering are concurred with and applied as appropriate. Note that a planning condition/s is included to optimise bicycle racks, storage and accessible parking arrangement as per the ADG and DCP consideration. This does not affect the net parking assessment.</p>
Waste Officer	<p>Supported with modified conditions.</p> <p><u>Planning Comment:</u> Modified conditions from the Waste Services are concurred with and applied as appropriate.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Supported with conditions.</p> <p>The modification proposal was referred to <i>Ausgrid</i> who provided a response stating that the proposal is acceptable subject to compliance with the relevant <i>Ausgrid Network Standards</i> and <i>SafeWork NSW Codes of Practice</i>. These recommendations will be included as a condition of the modification of consent.</p>
Aboriginal Heritage Office	<p>Supported without conditions.</p> <p>No AHO comments required.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no uses likely to give rise to any contamination. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the mixed land use.

The modification does not alter the previous consideration and conclusions pursuant to the SEPP that the site is satisfactory for development with no unreasonable or ongoing risk of land contamination.

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of *State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development* (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,*
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*

(iii) the conversion of an existing building, and

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
- (c) the building concerned contains at least 4 or more dwellings.*

The provisions of SEPP 65 are applicable to the assessment of this application in the context of the Modification application and the original multi-storey building approved by the NSW LEC.

As previously outlined within this report Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000* requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application Modification. This documentation has been submitted for the Modification.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design Modification panel, and*
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.*

DESIGN REVIEW PANEL

Northern Beaches Council has a Design Review Panel. This Modification application was considered by the Design and Sustainability Assessment Panel (however it is noted that the original DA predated the establishment of DSAP in mid-2020). Written feedback was provided to the applicant on selected elements of the Modification application. Generally the scale, appearance and overall design is supported and the applicant has sought to include further minor design changes or suitable alternative treatment to address the DSAP modification application comments.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The modification to the building is suitable for the urban setting within Manly and in so far as the proposal is a suitable style of mixed use development for the Local Centre with the general

configuration of basement parking, ground floor commercial / shop use retained and upper level apartments. The site is within a neighbourhood of mixed land uses (shops, apartment buildings, special use). Multi-storey buildings are the dominant building type. The redesign maintains a contemporary style and pattern and maintains a revised but characteristic design, including the retention of an original heritage building component.

The modification application seeks to increase the non-compliance with the maximum permitted building height however the modified design of the development is consistent with this Principle and the reasons for granting the height variation under DA220/2013. The site is not identified as a 'gateway' site in Manly but heritage considerations do form part of the neighbourhood character. The changes are considered to maintain compatibility with heritage considerations (subject to conditions) and are not inconsistent with the existing variety of building styles in the streetscape. Compatible setbacks are maintained with approved setbacks under DA220/2013 with appropriate landscaping / screening elements included. The building provides suitable articulation and use of balconies and wall changes to assist with cross-flow amenity and styling for the building. The modification is consistent with this design principle.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The modification maintains a similar design in terms of scale, bulk and height consistent with DA220/2013 and the desired future character for re-development sites in Manly. While the modification application has a non-compliance with the height limit (by increasing floor to floor levels) the overall shape, configuration and outer limits of the building bulk is commensurate with the original development consent. It is considered that the proposed height of the current Modification application achieves the desired character as outlined in the Manly DCP, and provides an acceptable built form and scale with neighbouring development. Associated changes to solar access, views and the like have been addressed by the design to ensure no unreasonable additional impact or ensure minimal change.

The proposal includes suitable articulation of the building and balconies and varied use of materials to provide for a high quality building facade that maintain acceptable presentation to the streetscape, including surrounding built forms.

The modification proposal satisfies this principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The Modification proposal maintains reconfigure internal apartments with a reduced overall density for

better internal amenity outcomes pursuant to the *Apartment Design Guide*. The proposal maintains a density appropriate to the site and context.

The Manly Local Centre is well serviced by infrastructure, public transport, community facilities and has good access to jobs. This area also enjoys the use of nearby public spaces. There is no density prescribed by the Manly DCP 2013 for this area. However, it can reasonably be expected that development of this type can be supported within the local centre. Furthermore, the existing conditions of consent ensure contributions to be paid to assist with Council development costs in providing future infrastructure. The Modification is consistent with previous conclusions with regard to infrastructure access and the associated referral responses from the relevant service providers.

NOTE: The applicant has not sought a modification to the CIV however Condition 43A is based on the number of dwellings (net decrease) and condition 43B based additional floor areas (net increase). These components have changed and is addressed under the heading "Internal Referrals (Development Contributions)" based on the NSW LEC approval conditions.

The modification development satisfies this principle.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The Modification design maintains acceptable cross-ventilation and sunlight access to achieve the desired amenity for the future residents. The number of apartments is now 15 with the top level apartments now merged to be in a single level each. While a number of bedroom and living area configurations have changed the schematic format with balconies for solar access, window and light / air well space retains acceptable design for sustainability principles to achieve BASIX requirements.

The existing consent contains waste management conditions to ensure appropriate waste management / recycling and disposal of waste.

The revised BASIX Certificate that confirms that the development is capable of achieving the water, energy and thermal comfort requirements. This has been updated for the modified conditions recommended.

The modification satisfies this principle and concurs with the original development assessment.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for

neighbours' amenity, provides for practical establishment and long term management.

Comment:

The development provides a landscaped elements podium level, and for selected balconies / terraces as shown on the amended architectural plans and planting schedule details on the landscape plans. The proposed landscaping will enhance the amenity of the development site and promote a quality image of the development and this assessment therefore adopts the same consideration as the landscaped areas are of a similar / consistent design, including streetscape changes at the ground level entry area recommended by DSAP.

Due to the requirement for basement parking, and the nature of the dense urban environment, limited deep soil zones (planter box areas) at ground level are provided subject to the stormwater, basement area and the modified ground floor configuration.

The modification satisfies this principle.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

The Modification application has been assessed in accordance with the objectives of the 'Apartment Design Guide'. In this regard revisions to the modification have been made to ensure no unreasonable loss of amenity by the changes proposed. Conditions are included to ensure vulnerable amenity impacts of solar access and natural light below podium level are minimised. The modified proposal has been assessed in terms of design consideration for solar access, noise and visual privacy, views, site facilities, accessibility and general amenity of neighbours in context with the original development consent and the density of the surrounding urban environment.

The modification satisfies this principle subject to conditions.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The modified development provides appropriate security and clearly defined entrances to residential apartments the ground floor commercial spaces and basement area. Through the balconies and ground floor commercial / retail space the development will provide passive surveillance to the streetscape / neighbourhood presence.

The modification satisfies this principle and is consistent with the original consent.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The development provides a mix of one, two and three bedroom units, some with 'study' rooms to assist 'working from home' in a reconfigured layout for all floors. The apartment mix has changed but maintains the inclusion of adaptable units, residential parking and accessible design elements to suit a social housing mix and demographic choice.

The modification satisfies this principle.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The development incorporates a mix of quality materials and design elements to achieve a high level of aesthetics and the styling of the building. The curved styling and material / colour scheme has been revised during the assessment to address MDCP considerations and DSAP comments.

The modification satisfies this principle.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent This Modification design is in the form of a 7 storey building with commercial / retail at ground level (6 levels of residential above). The general shape and major elements of the building with basement parking, driveway position,

		<p>heritage component, commercial / retail ground floor, podium level and narrower apartment level above the third floor is retained.</p> <p>The proposed building in its modified format includes reshaped (curved) balconies and reconfigured apartment layouts, removal of car stackers, and selected changes to wall elements / windows. The site analysis recognises the principal site characteristics and constraints associated with the approved design.</p>
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p>Consistent</p> <p>The Modification design introduces a restyled facade with use of curved elements that is visually interesting for the streetscape. The materials and styling was further reviewed in response to Council's DSAP review.</p> <p>The development optimises solar access within the development and will not unreasonably affect neighbouring properties or the street with the higher building height / profile. The building makes use of the northerly aspect to the rear boundary and view lines above the third storey for the easterly aspect also.</p> <p>This modification design was amended following DSAP review to adjust and reduce the additional height change proposed. Selected windows have been changed to maintain privacy (including off-sets /</p>

		screens / high sill or 'fixed' windows) and light to apartments within the building. Conditions are recommended to optimise privacy to rooms that are closest to the side boundaries while still maintaining natural light.												
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Consistent</p> <p>The modification has appropriate street layout and clearly defined entries to the public domain and ensure safe and secure entrance into the building.</p>												
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Inconsistent (acceptable on merit)</p> <p>The site area is 576.2sqm, 25% of this is 144.05sqm.</p> <p>No communal open space is provided under DA220/2013. The modification has maintained the approach that all apartments incorporate balconies at or above the minimum required open space areas and the site has adequate access to public open spaces associated with the Manly Harbour Foreshore, Manly Beach and Town Centre area. The Modification is consistent with the original development consent.</p>												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td>7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td><td></td></tr> <tr> <td></td><td></td><td></td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m					<p>Inconsistent (acceptable on merit)</p> <p>For this site the ADG requires 40sqm (7%) of the site area to be provided as deep soil zones.</p> <p>This Modification is consistent with the original development consent in that the commercial</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													

	<table><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table>	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>business centre location, constraints on the site and priority for basement parking means the proposal cannot achieve the deep soil zones below natural ground level. The Modification retains similar landscaped elements positions and planter box areas to soften the built form of the proposed development at selected positions within the external surrounds of the building. A revised landscape planting schedule has been provided to ensure appropriate planting in the spaces provided.</p> <p>The Modification has a revised stormwater management plan that has been assessed and approved by Council's Development Engineer.</p>								
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><td>Building height</td><td>Habitable rooms and balconies</td><td>Non-habitable rooms</td></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Inconsistent (acceptable on merit)</p> <p>The modification maintains similar building separation and wall plane alignments with regard to visual privacy. Details of wall separation for each storey is provided under the heading MDCP 'built form controls' table within this report.</p> <p>Selected side windows incorporate external screening devices, or landscape planter boxes or the main orientation for principal living areas. The is directed to the street or rear setback to further protect privacy. Building to building separation to the north complies. Closer wall alignments along the</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		<p>eastern and western boundaries have been maintained that are consistent with the approved plans, with selected window changes and additional screens introduced.</p> <p>At the street frontage the angled balcony and facade changes are designed to create an angled view past the front balconies rather than into the side of those balconies fronting Victoria Parade.</p> <p>It is recommended that the windows marked as "FIX" on the southwest (west) elevation be translucent glass. (The adjacent glazing marked "SD" are smaller but assist with light and ventilation and are suitably off-set from No.5-7 Victoria Parade.)</p> <p>Note: Apartment bedrooms and living area windows are commonly also complimented with internally fitted adjustable blinds / curtains for mutual privacy to / from adjacent buildings.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The pedestrian access to the site is clearly defined and easily accessible, including basement access to the lift.</p> <p>This principal vehicle and pedestrian access to the building has not changed for the modification and is acceptable.</p>
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high</p>	<p>Consistent</p> <p>The site has a single public road frontage to Victoria</p>

	quality streetscapes?	Parade. The vehicle access design is consistent with the DA220/2013 to ensure safe sight lines for pedestrians / vehicles. Conditions are unchanged for this consideration to ensure compliance with current Australian Standards 2890.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Inconsistent (acceptable subject to condition)</p> <p>Considering the convenient proximity to shops and public transport the Modification proposal maintains a satisfactory number of parking spaces and Council's Traffic Engineering conditions are unchanged.</p> <p>In summary, DA220/2013 has 23 residential car spaces (including 6 car stackers, for 17 apartments), 3 visitor spaces and 7 bicycle racks plus 17 storage cages. The modification has 17 residential car spaces (no car stackers, for 15 apartments), 6 visitor spaces, no bicycle racks and 17 storage cages. With the revised plans it is apparent that there is sufficient space to provide 15 bicycle racks, storage cages for each apartment, 6 visitor spaces (including 2 x AS1428 compliant spaces) and a car space for each apartment. A suitable condition is recommended to achieve this outcome for the modified basement design including a visitor bike rack in front of "Retail 1".</p> <p>Overall the total number of car parking spaces for the</p>

building was 23 and the modified basement levels also have 23 (but for now for 2 less apartments).

Part 4 Designing the Building

Amenity

Solar and Daylight Access

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:

- Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.

Consistent

The modification is consistent with the original development consent for internal solar access to ensure 70% or more of apartments achieve 2 hours direct sunlight as per the amended plans dated 21.7.2021.

The Modification proposal is considered acceptable and consistent with the control in this regard and solar access has marginally improved since the building is not as high consequently having marginally less shadow impact to surrounding land.

- A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.

Consistent

The modification complies as per the solar access diagrams. All residential Units have large glazed (living to balcony) windows to assist in maximising natural light and solar amenity into the living areas.

Natural Ventilation

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

- At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

Consistent

The Modification plans demonstrate that units are naturally cross ventilated (this is assisted by the use of the 1 light / air well and some dual level apartments at L1 / L2). Living and bedroom rooms are offset to create differences in pressure regions and promote airflow.

		Large balcony living area openings allow that assist airflow to units for single a dual aspect apartments. 75% apartments achieve cross ventilation.												
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent The modification plans show a maximum cross through depth of less than 15m.												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>Consistent</p> <p>The approved DA220/2013 had 2.8m ground floor, 2.9m for Level 1 to Level 5 and 3.1m for Level 6. The modification seeks to make all floor to ceiling heights compliant with the ADG.</p> <p>The Modification plans show 2.7m high habitable space is achieved for L1 to L6.</p> <p>A minimum of 2.4m high ceiling can be achieved to all non-habitable rooms and 2.7 is shown absent of bulk head ducting for bathrooms and the like).</p> <p>3.4m is achieved for the ground floor for the modification.</p> <p>The modification seeks to make the commercial / retail space and all residential ceiling heights compliant with the ADG. (Issues associated with overall building height, solar access and amenity are addressed under the relevant heading separately within this report).</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td></td><td></td></tr></table>	Apartment type	Minimum internal area			<p>Consistent</p> <p>The Modification plans show all apartments comply with the minimum</p>								
Apartment type	Minimum internal area													

Studio	35m ²	requirements. All units include 2 bathrooms and cater for at least another 5sqm of floor space as a result. 1 Bed - exceed 50sqm 2 Bed - exceed 70sqm 3 Bed - exceed 90 sqm (Largest 3 bed apartments are 155sqm, smallest 1 bed apartments are 66sqm)
1 bedroom	50m ²	
2 bedroom	70m ²	
3 bedroom	90m ²	
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.		
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		Consistent The modification plans show all habitable rooms have a minimum glass area of 10% of the floor area of the room, with the exception of bathrooms, small study and walk in wardrobes. A modification condition is included to ensure "study" rooms are not to used as bedrooms due to natural light / air / Building Code regulations.
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.		Consistent
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		Inconsistent (acceptable on merit) Unit 1, 2 and 3 do not comply with the maximum depth to the rear wall exceeding 8.0m however the shape of the kitchen extends within 8.0m for the standing area. This is acceptable with the north facing aspect. All apartments other apartments are less deep and the Modification design is acceptable.
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).		Consistent The Modification plans show the master bedrooms comply for all units. ("Study" rooms would not

		comply).															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent The Modification plans show the bedrooms comply for all units.															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Consistent The Modification plans show living spaces to all 1 bedroom apartments have minimum width of 3.7m. Units of 2 or 3 bedrooms comply with 4m width.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	N/A (Apartment are single aspect split level, dual aspect or 3 main aspects)															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent subject to condition The Modification plans show all balconies achieve the minimum depth of 2m for the main areas except for Unit 10 which is 1.8m wide. A condition is included to ensure compliance with the ADG and to not expand the balcony outward in to the heritage (hipped) roof below.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	N/A															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent Maximum of 5 units per level for the modification.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom</td><td>8m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom	8m ²	Consistent subject to condition. The Modification plans show all apartments have the storage requirement for each apartment. Due to considerations relating to other storage and parking requirements a condition is							
	Dwelling Type	Storage size volume															
	Studio apartments	4m ²															
	1 bedroom apartments	6m ²															
2 bedroom	8m ²																

	<table><tr><td>apartments</td><td></td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	apartments		3+ bedroom apartments	10m ²	included to ensure basement storage is maintained in compliance with the ADG.
apartments						
3+ bedroom apartments	10m ²					
	At least 50% of the required storage is to be located within the apartment.					
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Inconsistent (acceptable on merit). The Modification concurs with the original development assessment in that where possible storage, circulation and non-habitable rooms are located to buffer external noise sources. DA220/2013 was approved with conditions to ensure appropriate acoustic compliance with the <i>Building Code of Australia / National Construction Code</i> to address building acoustic protection with floors and walls. The modified plans have been assessed by Council Building Surveyor and existing conditions are deemed satisfactory. The proposal remains consistent with matters that will be satisfied by BCA/NCC compliance conditions and relevant Australian Standards.				
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The Modification proposal is suitably designed to mitigate noise transmission and minimise the impacts of external noise pollution. The Modification is consistent with the original consent including the repositioning of selected windows.				
Configuration						
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in	Consistent The development				

	supporting the needs of the community now and into the future and in the suitable locations within the building.	maintains a mix of one, two and three bedroom apartments with two adaptable units. The mix of apartments is appropriate to support the needs of the community.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The facade and cosmetic (more contemporary) styling of the building has been changed for the modification. The reshaping of balconies and front corners has been combined with a revised material cladding. The appearance of the heritage element remains consistent with the conditions of consent. While distinctive, the revisions to the building styling, streetscape presentation and colour / materials is consistent with advice provided by DSAP. The proposal is consistent with PLM advice and DSAP in this regard.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent The Modification plans show the roof is of an appropriate design for the locality, with the section of the heritage component retained and the flat roof at the top level, including thinner awnings for the upper balconies.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent The modification is consistent with the original development consent in that the landscape design as modified includes appropriate planting. Council's Landscape Officer has assessed the modified proposal and is

		satisfied in this regard.																																			
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	Consistent The Modification is consistent with the original development consent for appropriate planting on structures as per the revised landscape plan by <i>Paul Scrivener Landscape Architect</i> .																																			
	<table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>		Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm	
	Plant type		Definition	Soil Volume	Soil Depth	Soil Area																															
	Large Trees		12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																															
	Medium Trees		8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																															
	Small trees		6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent																															
	Shrubs				500-600mm																																
	Ground Cover				300-450mm																																
Turf			200mm																																		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Consistent All apartments have open plan living allowing flexibility in the use and more livable apartment layouts for the modification. The modification is consistent with the original development assessment and includes additional elements to the LHG.																																			
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Consistent The proposed modifications maintain the heritage element of the development and revised floor layouts for																																			

		contemporary living.
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p>Consistent</p> <p>The subject site is easily accessible through public transport and the street frontage is appropriately designed to contribute to the public domain.</p> <p>The Modification is consistent with the original development to maintain mixed use.</p>
Awnings and Signage	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p>Consistent</p> <p>The proposal includes a small awning and the retained awning for the heritage component consistent with DA220/2013. The awning is an adequate design within the streetscape of the area.</p> <p>No signage is proposed with the Modification or on the original design.</p>
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	<p>Consistent</p> <p>A BASIX certificate was submitted with the Modification application (to be adjusted for 15 apartments, reduced from 17).</p>
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<p>Consistent</p> <p>Council's Development Engineer, has considered this modified design and raised no objections, with selected condition changes.</p>
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<p>Consistent</p> <p>The Modification is consistent with the original development conditions for DA220/2013 that include operational waste management conditions, waste recycling / sorting and safe and convenient</p>

		storage of waste and recycling. Waste Services have provided selected condition changes. (Existing conditions remain instead of the mod condition where they are the substantially the same)
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<p>Consistent</p> <p>The building modifications are of a suitable design to minimise building maintenance.</p> <p>The Modification concurs with the original development assessment.</p>

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Note. *The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.*

Comment: The modified proposal satisfies the above matters in (a)-(c).

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act*

applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

As discussed above, the modification application to the approved building design is considered to achieve the design quality principles and objectives specified in the Apartment Design Guide to a satisfactory level. The original ADG / SEPP 65 concerns regarding excessive height and external elements have been addressed by amended plans (dated 21.7.2021). In making those building changes the Modification proposal has maintained satisfactory outcomes for privacy, ventilation, noise, services and general residential amenity, subject to conditions to address particular assessment issues identified or optimise amenity to adjacent properties in context with the existing approved scheme.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the modification application (see Certificate No.499050M-02 dated 30.11.2020).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	20	25

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The original DA proposal was referred to *Ausgrid* and no objection to the redevelopment of the land for shop top housing was raised. The modification maintains *Ausgrid* requirements / advice for the

redevelopment of the site that are included as recommended with the modification referral response received on 11.3.2021.

Other Service Infrastructure Authorities

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the NSW Roads authority as Traffic Generating Development:

- “(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*
- (b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.”*

Comment:

The original Development application was not required to be referred to the Roads and Maritime Service (now *Transport for NSW* (TfNSW)).

Any requirements for *Sydney Water* infrastructure are managed by separate processes and requirements through *Sydney Water* administration.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the *Sydney Harbour Catchment* therefore the provisions of this plan apply to this development.

An assessment of the modification proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The modified proposal is considered to be consistent with the above provisions of the SREP and consistent with regard to considerations made under the original approval. Given the particulars of the proposed modifications and the works already approved in context of DA220/2013 referral to the *Foreshores and Waterways Planning and Development Advisory Committee* was not considered necessary.

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	15m	20.9m*	21.59m	43.9%	No*

Buildings:		(Parapet) 21.9m (Lift over run)	(Parapet height reduced from 21.84m) 22.84m	52.2%	(See merit assessment) No*
Floor Space Ratio:	FSR:3:1 Res / Retail 25% (424sqm)	FSR: 3:1	FSR: 2.98:1 (GFA 1,699sqm) Retail / Residential Proportion 17.7% (302sqm)	N/A (Complies with GFA) 28.8% (122sqm less) (<25% required)	Yes - GFA for site (See merit assessment regarding No* 25% commercial / residential (Ratio change reduced to 17.7%)

The approved development has a maximum building height of 20.9 metres measured to the upper roof parapet and 21.9 metres measured to the top of the lift overrun. The existing development approval exceeded the 15m height standard by 5.9m (39.3%) and 6.9m (46%) respectively.

*See detailed merit assessment under the heading "Manly LEP" within this report.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	No
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.3 Height of buildings

The relevant judgments (originating with North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163 established that a "Section 96" (now "Section 4.55 / 4.56 modification") is a 'free-standing provision', meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application".

What this means is that it is this 'Section' for 'modification' itself which authorises the development to be

approved notwithstanding any breach of development standards. Section 4.55 (formerly Section 96) is a broad power to approve, subject to its own stand-alone tests (such as the "substantially the same" test, and a requirement to consider all relevant matters for consideration).

Section 4.55 / S4.56 does not rely upon having any Clause 4.6 variation (or formerly SEPP 1) in order to enliven that power to approve. "Clause 4.6" is negated from being applicable under a modification of consent.

Pursuant to the above the proposed height under the modification is assessed on merit by addressing the objectives of the zone and the height controls under Manly LEP. Related considerations of views, overshadowing, amenity and streetscape are discussed in context with the relevant objectives and under the relevant specific Manly DCP controls. Consideration of related submission issues (in the public interest) also forms part of this merit assessment.

Zone B2 Local Centre

The underlying objectives of the B2 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The modification maintains a mixed use development with ground floor retail / commercial tenancies which contribute to activating the street frontage. The modification is able to accommodate a range of business uses at ground floor that serve the needs of people who live in, work in and visit the local area. The modification proposal includes some apartments with "study" rooms to assist in "work from home" options and overall the building achieves this objective. The height variation sought does not have an adverse impact on this objective.

- *To encourage employment opportunities in accessible locations.*

Comment:

The modification proposal maintains good internal accessibility for parking, common areas, the retains space and with the proposed adaptable apartments. The modification proposal achieves this objective for contributing to employment opportunities close to Manly town centre.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment:

The site is located close to the Manly Ferry Terminal and bus transport links. The building is within easy walking / cycling distance of many local shops and facilities. The modification scheme has a satisfactory level of residential and general visitor parking given convenient access to local shops and transport. Overall the modification is consistent with this objective

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

Existing conditions of consent for compliance with Australian Standards and Building Regulations ensure the acoustic performance of air conditioning condensers and the like achieves this objective. The modification remains consistent with conditions of consent relating

to noise amenity.

For the reasons detailed above, the modification application for the reconfigured building design, with its modified overall height at RL26.95 (to the parapet roof line) and overall scale is consistent with the objectives of the B2 Local Centre zone.

Height of Buildings

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are considered 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:

The prevailing building heights in the immediate vicinity are somewhat variable between the Wentworth Street at the rear site and the adjacent site in Victoria Parade. The site has a heritage item element and consideration of solar access and views led to various amendments to the development with proceedings in the NSW LEC that resulted in the approved scheme in terms of height, floor space distribution, setbacks and streetscape appearance. The modification proposal has been reviewed by way of a pre-lodgement process and Council's DSAP to ensure building height changes do not create unreasonable impacts in relation to the desired future streetscape character and the quality of the building's restyled appearance.

b) to control the bulk and scale of buildings,

Comment:

This modification seeks a restyled appearance that is "less monolithic" at the street frontage and adopts a contemporary curved styling. The height increase is attributed to seeking compliance with the ADG floor to floor requirements thus carried through overall height increase of 1.25m to the roof and 1.15m to the outer lip of the balcony awnings (as per amended design shown in the image below). It is considered that the modification height proposed at the street frontage does not have any significant additional impacts on the streetscape or public domain in terms of overshadowing, bulk and views. The modified height and restyling of the building addresses bulk by use of shaped balconies, wall articulation, appropriate colours materials for the front and rear elevations. Compliance with the overall site FSR supports the consideration that, on merit, the height proposed is not introducing excessive bulk materialising as floor space.



Image: Height of the building modification (as per amended plans dated 21.7.2021) in context with surrounding bulk, scale along the streetscape visible from Victoria Parade.

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:

The modification proposal has been considered pursuant to *Clause 3.4.3 Maintenance of Views* in this report, which includes a detailed site analysis in context with the planning controls. The proposal is not considered to have an unreasonable impact on views to what would generally be expected in response to the ADG, DCP controls, including applicable heritage considerations. The modification is consistent with seeking to minimise impacts on view corridors toward St Patrick Estate and toward Manly beachfront. The modification has addressed the reasons for approval of DA220/2013 with regard to not neglecting view issues and the associated impact the reconfigured design of the building.

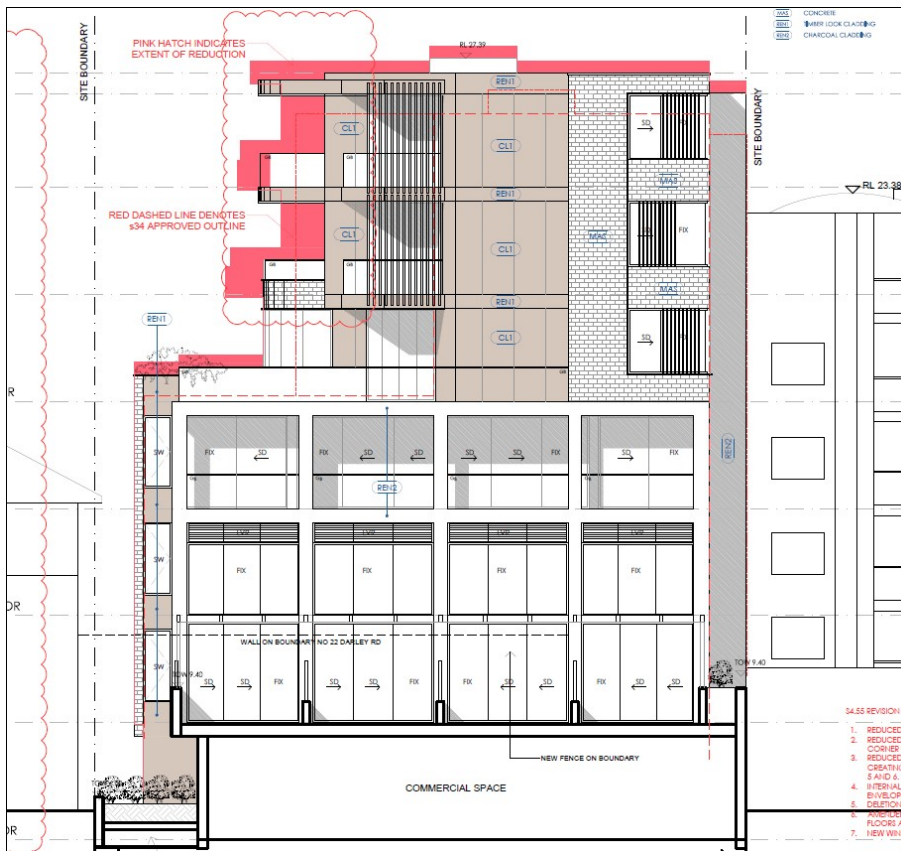


Image: View of the rear of the building in context with the height of adjacent buildings

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:

The modification proposal will not result in unreasonable overshadowing of neighbours, street or other public space despite the non-compliance with the height limit. This is demonstrated by the shadow diagrams provided the applicant with the modification plans, subject to conditions to optimise solar access to No.13 Victoria Parade. In this regard even where solar access has been significantly compromised by the surrounding pattern of development small changes in solar access should be considered and the proposal has sought to ensure natural light or direct sunlight is consistent with that retained by DA220/2013. Conditions are recommended to minimise overshadowing change to No.13 Victoria Parade by stepping back the eastern balustrade and planter boxes from the edge of Units 12 and 13. (Note: This also assists view lines toward St Patricks Estate from Units in Wentworth Street)

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:

This objective is not applicable.

Comment:

For the reasons detailed above, the modified application is considered to be consistent with the objectives of Clause 4.3 Height of Buildings, including associated amenity considerations, to support the variation to building height as detailed on the amended plans, dated 21.4.2021 (Revision 4), drawn by Platform Architects. The height variation proposed is supported pursuant to Clause 4.56 considerations as a Modification of development consent.

4.4 Floor space ratio

Overall the proposal complies with Clause 4.4 regarding permitted net FSR and maintains consistency with the objectives of Clause 4.4 and the Manly LEP.

The objectives of this clause are as follows:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Considerations of building bulk, scale and density in context with streetscape have been considered and the external wall outlines are substantially the same with some minor restyling to assist the reconfiguration of the internal unit. The density of the building scheme has been reduced by amendments (dated 21.7.2021) and is satisfactory. Overall the building maintains the general configuration of basement parking, ground floor business uses and 6 residential levels above. The FSR maintains consistency with the approved scheme in terms of visual relationship its surroundings, environmental impacts and encouraging employment opportunities with mixed use development.

The remaining 'commercial/retail' to 'residential' FSR balance is 17.7% (shortfall of 7.3%), and as per Clause 6.16 (requires 25% balance) is considered under that heading within this report. In summary, since the configuration has been altered to include 2 commercial leases at the rear of the ground floor and 2 retail leases fronting the street with partly reduced area for adjustments required at ground floor level between access, toilets, bin rooms, lift space, entry areas and shop / commercial lease space.

5.10 Heritage conservation

The modification proposal has been submitted with a comprehensive heritage assessment report to address the objectives of this Clause. In summary, conditions to ensure heritage conservation of the front section to No.11 Victoria Parade are retained for DA220/2013, and any additional recommendations under the heritage assessment. The proposal has been reviewed by Council's Heritage and details of that assessment of the modification are provided under the heading "Internal Referrals" within this report.

The applicants expert Heritage consultant addressed the DSAP Panel in relation to heritage considerations in context of the modification plans. (See DSAP comments under Internal Referrals). The heritage components of the front section of No.11 Victoria Parade are to be conserved and heritage conservation conditions remain substantially intact as per the NSW LEC court approval. While there will be renovation work / change to parts of the building section being retained the heritage component to be conserved is substantially the same as per DA220/2013 required by the Court approval.

In summary, the modification is consistent with the objectives of this clause.

6.2 Earthworks

The modified proposal has been considered pursuant to the objectives and requirements of this clause. In particular the modification will marginally increase the depth and volume of excavation due to the lower basement parking level. No excavation area is proposed under the footprint of the heritage section of the building on No.11 Victoria Parade to be retained as part of the proposal.

Concern regarding geotechnical engineering and dilapidation risk have been reviewed by Crozier Geotechnical Consultants (Report No.2013-141.2 dated September 2020). The existing development consent also includes conditions to ensure safety, geotechnical engineering, groundwater and dilapidation risks are appropriately managed during works.

The geotechnical report includes the following conclusion to the modification works:

"the proposed depth of the basement level carpark will extend below the existing water table and therefore requires dewatering. However it is considered that provided water proof excavation support measures are implemented and the excavation perimeter is tanked as part of the completed development that dewatering will be temporary and result in only minimal impact to the water table and negligible impact to adjacent properties or structures. The entire excavation will require the installation of excavation support measures prior to bulk excavation.

Due to the limited access to the site for investigation purposes due to the existing building structures it is recommended that further geotechnical investigation into soil condition/strength parameters and potentially bedrock occur to allow accurate design of footings and excavation support.

The proposed development is considered to be suitable for the site and provided the recommendations of this report are implemented in the design and construction phases the works should be completed with no geotechnical impact to neighbouring properties or structures."

6.13 Design excellence

The proposal is generally consistent with the matters for consideration under this clause, as listed below:

- (a) contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*
- (b) is likely to protect and enhance the streetscape and quality of the public realm, and*
- (c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*
- (d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*
- (e) encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*
- (f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*
- (g) protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*
- (h) promotes vistas from public places to prominent natural and built landmarks, and*
- (i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*
- (j) responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*
- (k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*

The modification design submitted (as 'Revision 4' dated 21.7.2021) has redesigned the internal layouts, essentially for more spacious apartments and with a yield of 15 units being 2 less than that approved by the NSW LEC with DA220/2013. The streetscape and rear elevations of the building are similar except being with the podium level marginally higher and some cosmetic and balcony side

additions on the eastern site. Selected balconies have been narrowed to conceal them along the angle wall line for the units above podium level.

The modification changes and the overall new styling of the building is consistent with parts (a) to (k) above. As discussed within this report, the proposed height of the modification results in no unreasonable additional view impacts given 4 principle consideration and balance of changes made to the external elements of the building. The application was also reviewed by the DSAP and selected amendments were made to include the recommendations of the DSAP as far as practicable by the applicant, without requiring significant redesign in consideration of this clause of the Manly LEP.

As such, the modification proposal is considered to be consistent with clauses a to k in this control.

6.16 Gross floor area in Zone B2

- Development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises*

Merit Assessment

Refer to Floor Space Ratio discussion under the heading 'Manly Local Environmental Plan 2013. In summary, the proposal complies with the overall FSR however the modification still retains a variation to the 25% proportion requirements of residential to commercial / retail area. The variation however is substantially the same in area balance as approved under DA2020/2013.

The remaining variation is 28.8%, being provision of 17.7% (302.3sqm) and not 25% (424.7sqm) commercial / retains floor area of the GFA. This configuration has been altered to include 2 commercial leases at the rear of the ground floor and 2 retail leases fronting the street with partly reduced area for adjustments required at ground floor level between access, toilets, bin rooms, lift space, entry areas and shop / commercial lease space. Diversity of land use is maintained including the conservation of a heritage component of the existing buildings. Overall the proposal complies with Clause 4.4 regarding permitted net FSR and maintains consistency with the objectives of Clause 4.4 and the Manly LEP. The FSR variation pursuant to Clause 6.16 development standard as related to Clause 4.4 is supported.

Manly Development Control Plan

Built Form Controls

Built Form Controls -	Requirement	Approved*	Proposed*	Variation	Complies
4.2.3 Setbacks (Side, front and rear)	B2 Local Centre Build to boundaries permitted except where <i>'the stipulated setback</i> <i>would be undesirable in terms of the amenity of any residential uses</i>	Side boundary - East Basement 0.0m (except for under heritage element) Ground Level - 2.2m to 1.4m Level 1 - 2.2m to 1.4m Level 2 - 2.2m to 1.4m Level 3 - 2.2m to 1.4m	Side boundary - East Basement 0.0m (except for under heritage element) Ground Level - 3.0m to 1.4m Level 1 - 2.2m to 1.1m Level 2 - 2.2m	No change Wall line & window Terrace 2.24m to 1.4m Side terrace change 4.9m	No* (See merit assessment)



	<i>existing on adjoining land or proposed for inclusion in the development.</i>	Level 4 - 10.8m to 5.8m Level 5 - 5.9m to 6.6m Level 6 - 6.7m Roof - 5.8m to 6.7m	to 1.1m Level 3 - 2.2m to 1.1m Level 4 - 10.4m to 5.0m Level 5 - 5.0m to 6.6m Level 6 - 6.7m Roof - 4.9m to 6.7	Side terrace 4.9m Side terrace roof 4.9m	No* (See merit assessment)
		Side boundary - West Basement 0.0m Ground Level - 0.0m Level 1 - 0.0m to 1.0m Level 2 - 0.0m to 1.0m Level 3 - 0.0m to 1.0m Level 4 - 0.0m to 1.0m Level 5 - 0.0m to 1.0m Level 6 - 0.0m to 1.0m Roof - 1.0m	Side boundary - West Basement 0.0m Ground Level - 0.0m Level 1 - 0.0m to 1.0m Level 2 - 0.0m to 1.0m Level 3 - 0.0m to 1.0m Level 4 - 0.0m to 1.0m Level 5 - 0.0m to 1.0m Level 6 - 0.0m to 1.0m Roof - 1.0m	Light / air well change Light / air well change Light / air well change Light / air well change	No* (See merit assessment)
		Rear boundary Basement 0.0m Ground Level - 0.0m Level 1 - 3.5m Level 2 - 3.5m Level 3 - 4.5m to 5.9m Level 4 - 3.5m Level 5 - 3.5m Level 6 - 3.5m Roof - 3.5m	Rear boundary Basement 0.0m Ground Level - 0.0m Level 1 - 3.5m Level 2 - 3.5m Level 3 - 4.5m to 5.9m Level 4 - 3.5m to 4.8m Level 5 - 3.5m to 4.8m Level 6 - 3.5m to 4.8m Roof - 3.5m to 4.8m	Rear terrace 0.9m Rear terrace 3.3m	No* (See merit assessment)
		Front setback Basement 0.0m (except for under heritage element) Ground Level - 0.0m to 3.7m Level 1 - 0.0m to 3.6m Level 2 - 6.4m to 3.6m Level 3 - 8.9m to 3.8m Level 4 - 6.9m to 3.8m Level 5 - 6.9m Level 6 - 6.9m	Front setback Basement 0.0m (except for under heritage	Front balcony 0.0 to 1.0m Existing roof overhang. Front balcony 6.4m to 1.0m Front balcony 1.0m Front balcony 3.3m Front balcony 4.1m Balcony roof 4.1m	

		Roof - 6.9m	element) Ground Level - 0.0m to 3.8m Level 1 - 2.3m to 3.6m Level 2 - 6.4m to 2.3m Level 3 - 8.3m to 2.3m Level 4 - 6.9m to 2.3m Level 5 - 6.9m Level 6 - 6.9m Roof - 6.9m to 4.1m		
4.2.4 Car parking, vehicular and loading	Units 17 residential (1 space per dwelling) 2 visitor (0.16 space per dwelling) Commercial 11 (10.1 rounded up) Commercial (1 space per 40sqm of GFA)	17 spaces (carstackers used) Visitor 5 Commercial 0 (shared with 5 visitor)	Residential 15 Visitor 5 Commercial 0 (shared with visitor)	Car stackers removed for 2 levels of basement. (15 residential Units) Shop and commercial floor space changed	Yes No* (See merit assessment)
4.2.6.1 Wall height on street frontage Setback to upper level	16m Upper storey stepped back at the 15m height plane	15m Additional 2 storey wall stepped back to 6.9m above 15m	16.2m Additional 2 storey wall stepped back to 6.9m above 15m	Front elevation changed by higher floor to floor space	No* (See merit assessment)

** Measured to main vertical wall line / element See details under the heading *Residential Flat Design Guide* within this report.

Revisions to the plans during assessment include:

1. Reduced building height by 0.35m (RL changes)
2. Reduced building envelope at SE corner to Level 5 and 6.
3. Reduced the number of units from 17 to 15 by larger full level apartment on level 5 and 6.
4. Internal layout changes due to reduce envelope (e.g. compressed width)
5. Delete raised planter at ground floor entry lobby.
6. Amend external finishes and reduced depth of slab edges.
7. New window to eastern wall of level 5 and 6.

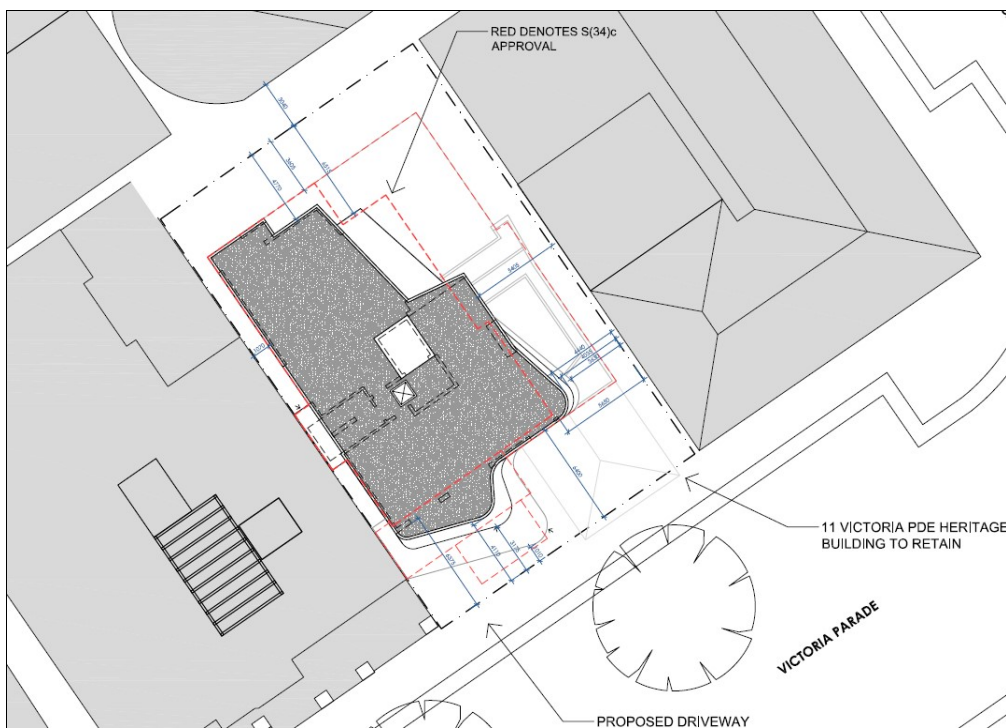
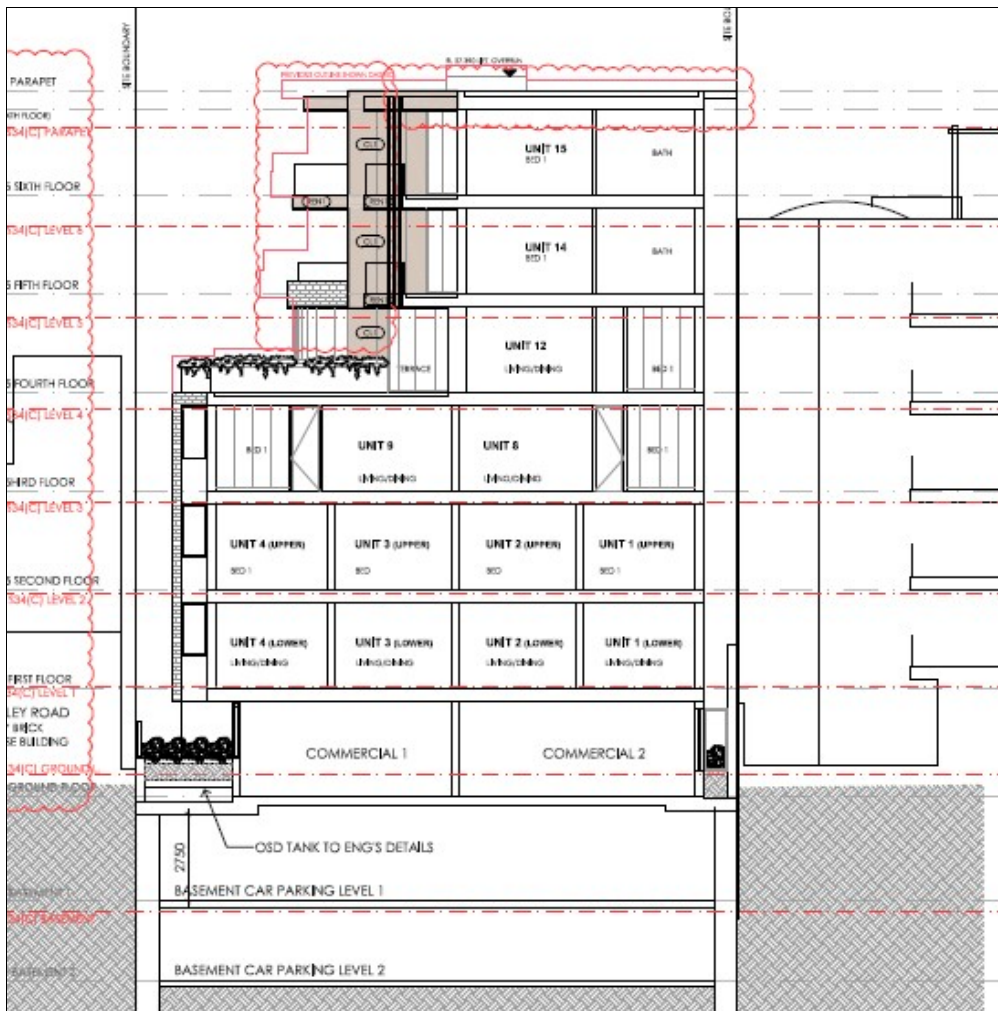


Image: Cross section east - west and site plan showing change in floor levels (including 15 Units) and plan view of building position to side, front and rear boundaries.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	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
3.5.7 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
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	No	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	No	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Comment:

The modified parking design maintains minimum visibility and impact on the townscape. Given Victoria Parade is the only street access, the parking design and vehicular access is considered to be the most suitable design for the location and the deletion of car stackers in favour of normal single car spaces is safer, more convenient and practical design, consistent with this objective.

Objective 5) To assist in maintaining the character of the locality.

Comment:

The subject site is located within the established Manly town centre area with the existing buildings on the site predating most other surrounding buildings. The semi-commercial nature of the area and position close to the "Corso" means there is a mix of commercial and shop top housing and mixed used (including special uses) developments with the majority between 3 to 6 storeys in height that include heritage listed buildings and late 20th century architectural styles. The modified proposal is considered acceptable in relation to clause 3.1.3, and consistent with this objective.

Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.

Comment:

The modified proposal is suitably designed to provide an active street frontage and maintain active streetscape contribution to Victoria Parade and remains consistent with this objective.

Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.

Comment:

The proposed upper level of the building is setback and the non-compliance with the height control is not significant enough to have an adverse visual impact on Victoria Parade, given the pattern of surrounding development and the way the building addresses street, including the heritage conservation of part of No.11 Victoria Parade building.

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 modification design is supported and has addressed previous height concerns.

3.1.3 Townscape (Local and Neighbourhood Centres)

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Comment:

The parking design will minimise its visibility and impact on the townscape by maintain basement parking. Given Victoria Parade is the only street access, the parking design and vehicular access is considered to be appropriate for the design and the modifications proposed remain consistency with this objective to provide parking on site.

- *To assist in maintaining the character of the locality.*

Comment:

The subject site is located within the established surroundings of Manly Town Centre. Development located within the central part of Manly is predominantly characterised by a mix of commercial and shop top housing developments with the majority varying between 3 to 6 storeys in height. The modification proposal is considered acceptable in relation to the LEP provisions for Townscape considerations and consistent with this objective.



Image: Streetscape outline of approved building form and bulk / shape presentation to Victoria Parade.



Image: Streetscape montage of modification altered shape, height and configuration. (Amended with lower height including colour, material changes and reduced upper awnings following DSAP review).

- *To recognise the importance of pedestrian movements and townscape design in the*

strengthening and promotion of retail centres.

Comment:

The modification proposal is suitably designed to provide an active street frontage and activate this section of the established area around Manly town Centre and remains consistent with this objective. The site has no through links.

- *To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

Comment:

The proposed upper level of the building is setback and the non-compliance with the height control is not significant enough to have an adverse visual impact on Victoria Parade with the amended plans, given the pattern of surrounding development and the way the building addresses street and its site characteristics. The subject land is a mid-street position and therefore not subject to more onerous considerations of being a corner site or directly visible from, arterial roads, Manly Wharf area or Manly beachfront.

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 modification design (as amended) is supported.

3.4.1 Sunlight Access and Overshadowing

Relevant merit assessment objectives and requirements for *Clause 3.4.1 for Sunlight access and Overshadowing* are addressed as follows for the modification:

- *To provide equitable access to light and sunshine.*

Comment:

Detailed shadow diagrams (Revision 3) have been provided as sheets 1 to 6 demonstrating that there is no significant change in solar access / overshadowing between 9am and 3pm on the 21 June between the approved building and the modification scheme. In this case the modification is substantially the same with regard to solar access for surrounding properties.

- *To allow adequate sunlight to penetrate: private open spaces within the development site; and private open spaces and windows to the living spaces / habitable rooms of both the development and the adjoining properties.*

Comment:

Much of the existing shadow regime over the site and on adjacent land is cast by No.18-20 Darley Road which is a 7 storey commercial building. The revised plans enable more internal solar access to overcome the existing shadow situation with new window openings facing the rear boundary and less windows along the narrow side setbacks between No.5-7 Victoria Parade and No.13 Victoria Parade. Overall the proposal maintains substantially the same overshadowing outline as the approved scheme with DA220/2013.

- *To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by: encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The modification proposal creates no significant change to overshadowing on the southern side Victoria Parade and the overshadowing regime to adjacent dwelling within No.5-7 Victoria Parade and No.13 Victoria Parade is substantially the same. While direct solar access may be experienced before 9am or after 3pm the MDCP does not prescribe that solar access hours be extended in order to address circumstances.

The modification however has sought to avoid any additional impact on No.13 Victoria Parade by recessing the edge of the podium terrace area (RL17.45) to assist in natural light penetration in the gap between No.13 Victoria Parade and the site. Given that there are a number of windows along the side elevation of No. 13 Victoria Parade. It is noted that the plans dated 21.7.2021 show a rear side window for No.13 Victoria Parade that is a drafting error however the windows are too far below the podium level and main upper wall plane of the approved building to achieve any sustained solar access on 21 June without radical design changes to DA220/2013.

Overall the proposal is consistent with this objective, but it is considered that a wider setback to the edge of the podium level from No.13 Victoria Parade would increase sunlight penetration to the side windows to that building during the spring and summer solstice, and more so in summer. Therefore, a increase to the 0.8m recess shown on plan A1.06 dated 21.7.2021 is recommended for the terraces areas on the eastern side of Unit 12 and 13.

3.4.2 Privacy and Security

Merit consideration of the modification proposal pursuant to the requirements and objectives of Clause 3.4.2 Privacy and Security is addressed as follows:

- *To minimise loss of privacy to adjacent and by appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings. Balance outlook and views from habitable rooms and private open space.*

Comment:

The proposal has sought to generally improve privacy throughout the modification plans by selected changes to windows, privacy screens and minor changes to wall alignments. In particular, the angled side wall for Bed 2 and a kitchen relating to Units 9 & 4 assist with direct light to those rooms and have deleted the side facing window. On the western side of the building privacy screens are used for the 'study' rooms and it is recommended that translucent glass be used for 'fixed' glazing to bedrooms facing No.5-7 Victoria Parade in order to maximise privacy with the modification changes. An increased side setback to the podium terraces for Unit 12 and 13 will also assist in acoustical and visual privacy to No.13 Darley Road. This will assist to balance outlook and views from habitable rooms and private open space.

- *To increase privacy without compromising access to light and air.*

Comment:

The modification includes a change to offset the wall recess to form a lightwell (adjacent the internal

stairway) on the western side elevation with No.5-7 Victoria Parade. It is considered that the original wall alignment be retained since the approved light / air well is already narrow as per DA220/2013 and the change to Bed 1 for Units 6,7,11, and 13 unnecessarily impacts 5.7 Victoria Parade by reducing the dimensions of the lightwell. This issue is addressed by a recommended condition. The lightwell is shown to include 'white render' to assist in providing natural light down into this space. Despite the narrow western side setback, the small windows marked 'SD' (sliding) are required for light ventilation, have a high sill level and small enough to ensure no unreasonable privacy impact with clear glazing.

- *To encourage awareness of neighbourhood security*

Comment:

The modification proposal maintains suitable security and passive surveillance of the street front and surroundings consistent with the pattern and density of surrounding development.

In summary, the modification is consistent with the objectives of this clause, subject to conditions.

3.4.3 Maintenance of Views

This modification assessment considers view loss from No 2 Wentworth Street and 5-7 Victoria Parade as the principle view line angles and generally in the context of surrounding apartments. (Note: Where access is not possible due to availability, CV19 restrictions or the like, survey information and comparison with existing site assessment details and suitable vantage points is used including geographic related information, photos, diagrams and the like already held within Council's systems / files for DA220/2013).

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:

This modification assessment has considered the principal view lines outlined in terms of view corridors associated with sight lines toward St Patricks Estate Manly (School of Hospitality Building which is an iconic building) and views along Victoria Parade toward Manly Beach. The ocean water is not readily visible at Manly Beach due to street planting and the 4-5 storey height of buildings along the eastern

end of Victoria Parade. Views to Manly Harbour (the Esplanade) along Victoria Parade to the west are also possible but highly restricted by the built form of No.5-7 Victoria Parade. This building has been designed to capitalise on the closer view toward the harbour with the stepped shape of its front balconies.

At present, the views are generally unaffected due to the smaller original buildings on site. District (urban outlook) views to the south east therefore provides an outlook from No.2 Wentworth Street and adjacent building that can see through the gap (over the roof line) between No. 13 Victoria Parade and No.5-7 Victoria Parade.

The view analysis provided by the applicant demonstrates that these views across the rear boundary and side boundaries (toward the front of the site) were impacted by the current development consent of DA220/2013, and the modification seeks to maintain consistency with view sharing considerations for the reshaped built form of No.9-11 Victoria Parade. The amended plans demonstrate the degree of change proposed in the visual montage that a relatively small change the view impact is made compared to the development consent for DA220/2013. In this regard, the view sharing is substantially the same when taking account of whole views (front and rear balconies / main windows) and partial views (generally across side or rear boundary) and while the view lines are valued in term of views along the street corridor and toward the south east the view line are narrow and partly obscured or interrupted by the broader surrounding pattern of development, trees, minor infrastructure, existing higher apartment buildings and the like.

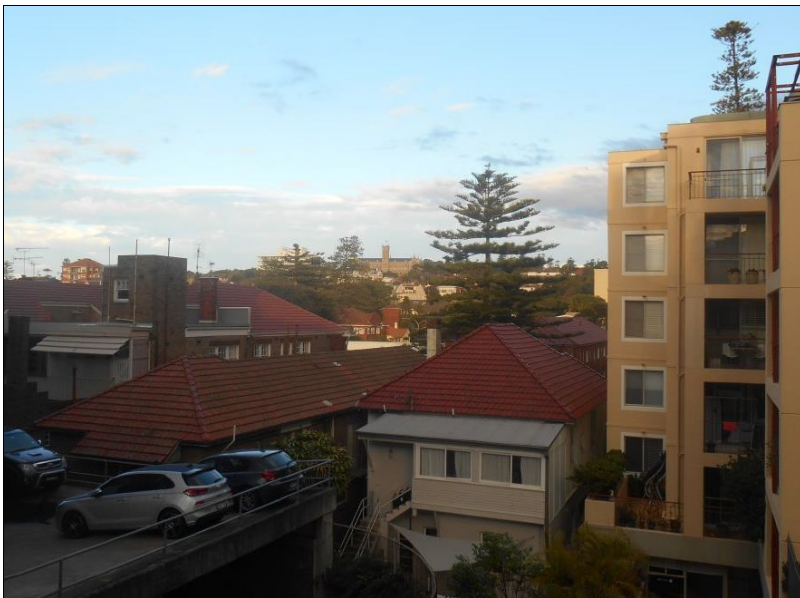


Image: View corridor across exiting building roof level on the site southeast from No.2 Wentworth Street toward St Patricks Estate



Image: View corridor across exiting building roof level on the site southeast from No.5-7 Victoria Parade east along Victoria Parade toward Manly Beach

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.

Southeasterly views

The views to the south east affected are generally directly across the rear boundaries and through the core of the site when looking from No.2 Wentworth Street. In particular the podium level of the fourth floor defines the horizontal impact with the outer limits of the eastern wall for level 4, 5, and 6 including roof profile, defining the vertical impact of the view corridor toward St Patrick Estate.

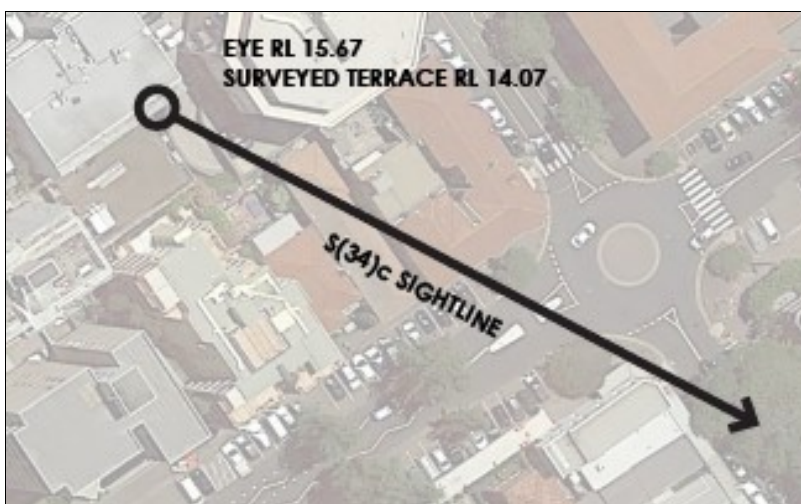


Image: Principle view corridor across the rear boundary toward the south east.

Wentworth Street

The modification is likely to alter the view impact toward St Patrick Estate due to the raised floor and balustrade elements at the podium level for the modification. In recognition of this the applicant has revised the plans to reshape the eastern balconies and marginally lower the floor levels as per the amended plans dated 21.7.2021. To further reduce view concerns for views toward St Patrick Estate it is recommend that the width of the podium terrace for Unit 12 (RL17.45) be limited, with the balustrade / terrace following the same alignment as the eastern wall for Unit 12 and 13. The resulting terrace is not more than 3.5m wide and the additional height of the balustrade (0.9m) does not overextend the view impact to the south east. While the view corridor to the south east and St Patrick Estate is highly vulnerable the modification should not unnecessarily create additional minor intrusions at standing level and would therefore have some marginal change also to a sitting position as per DA2020/2013 from RL14.07. Higher up, the view line impact to the south-east above RL 20.0 (L5 and L6, including the roof height) is consistent with DA220/2013.

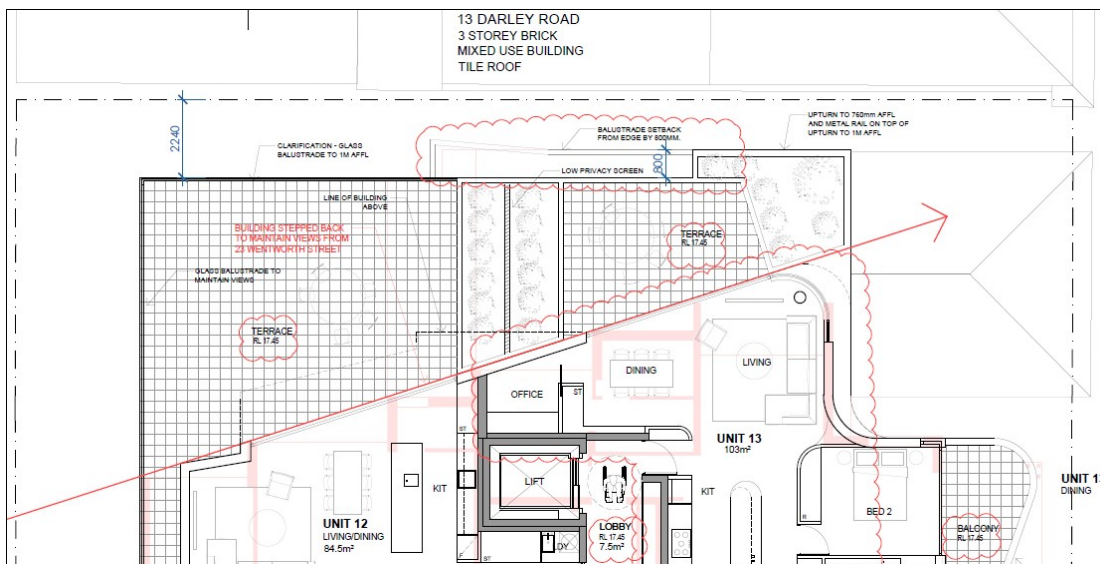
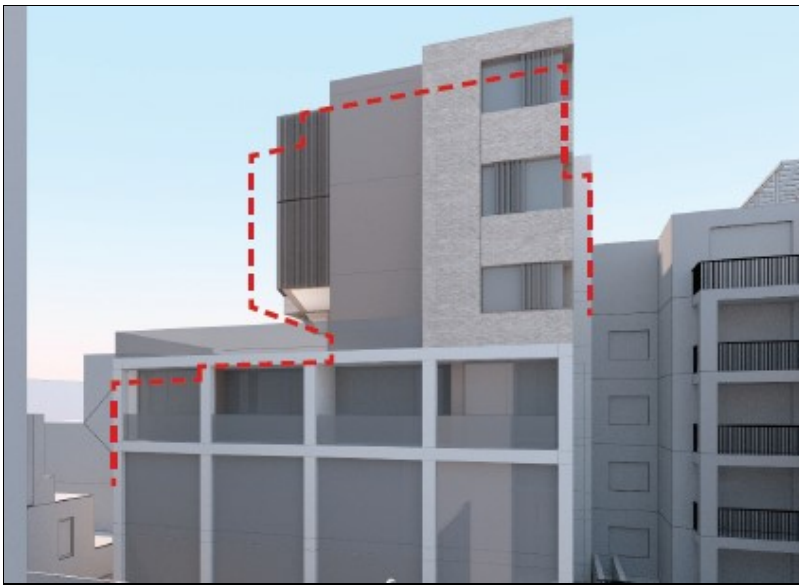


Image: Red outline of DA22/2013 approved building shape with modification image montage and view angle across Level 4 podium.

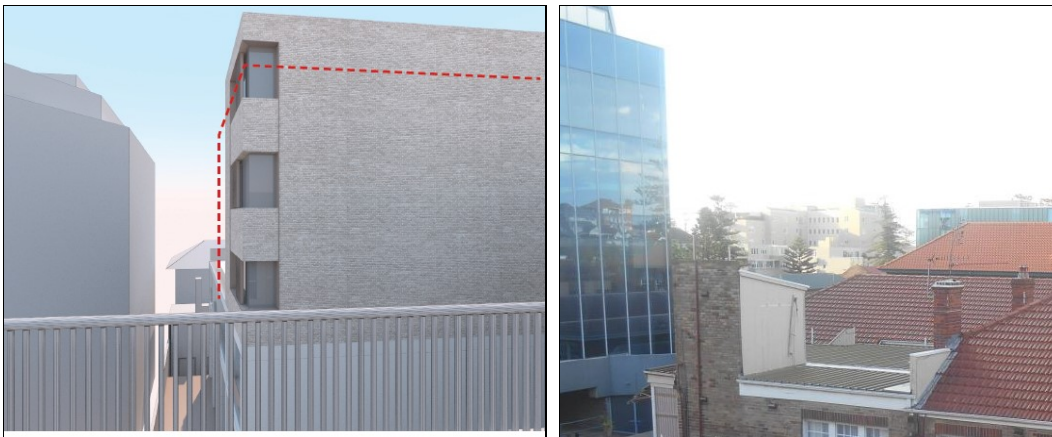
Victoria Parade

Views along from No.5-7 Victoria Parade are affected by reshaping of the front balcony element. Both standing and sitting views are affected due to the existing open side setback and open front setback

area above the existing building on the site. The approved plans for DA220/2013 have square shape balconies with thick supporting posts / frames as indicated by the dotted outline in the image below (looking eastward across the front setback and side boundary). The modification has reshaped the wall for the front bedrooms and balconies. The angled front wall creates an impact on corner windows but the revised curved balcony shape reduces the bulk of the vertical pillars to minimise that view impact along the streetscape. On balance the view impact is considered to be substantially the same without creating unreasonable impact for easterly views from No.5-7 Victoria Parade.



Image: Eastward view direction along the front setback of Victoria Parade toward Manly Beach.



Images: View corridor along rear setback eastward and side boundaries eastward from RL21.4 at No.5-7 Victoria Parade toward Manly Beach. Red outline demonstrates the view corridor is substantially retained as per DA220/2013

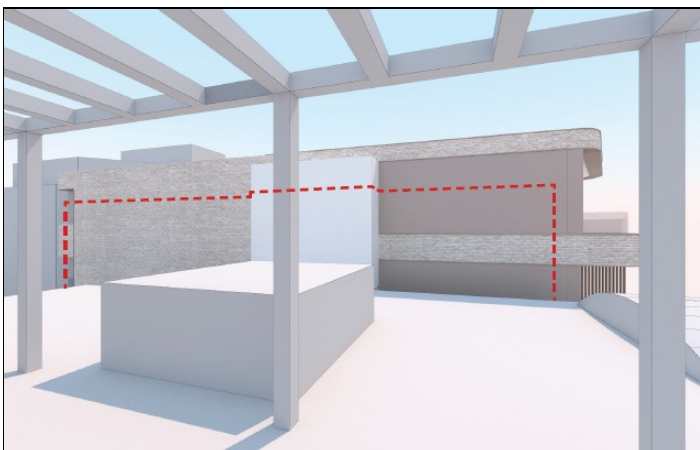


Image: View montage east from roof top terrace across side boundary. The approved outline of the building already obstructs the eastward view due to approved height. Note that this roof terrace also gains views toward Manly Harbour along Victoria Parade.

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 views through the subject site towards St Patrick Estate are part of limited view line in a densely developed urban area. Views have been considered principally from living / balcony areas and kitchens where they are part of an open plan design. The extent of the impact in comparing the approved plans under DA220/2013 retain the majority of views and subject to condition the modification is substantially the same for principal balcony area.

In summary, the modification plans have reshaped the balcony elements, introduced some new balcony / wall alignments and changed floor levels. On balance the amended plans dated 21.7.2021 have revised the view impacts to be consistent to what was previously approved with DA220/2013 subject to conditions for some minor elements. Given these considerations, the view impact caused by the modification with regard the degree of change is considered to be 'minor' overall in the context the whole view in each case for adjacent properties and in particular those within No.5-7 Victoria Parade and No.2 Wentworth Street. View considerations have considered living areas but for the most part balcony areas are used to indicate the view line, taken from a central standing position.

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:

An assisting factor to the view assessment has the ability to make a comparison to the existing consent and comparison is used in context as a guideline to evaluate the views, and the level of skill applied in the modified design to addressing the need to remain substantially the same as the view impact ("control points" being outer limits of solid walls / balconies). This is demonstrated in the amended modification plans dated 21.7.20201 in the image below by comparison with the outline of the approved building under DA220/2013 and the current modification.

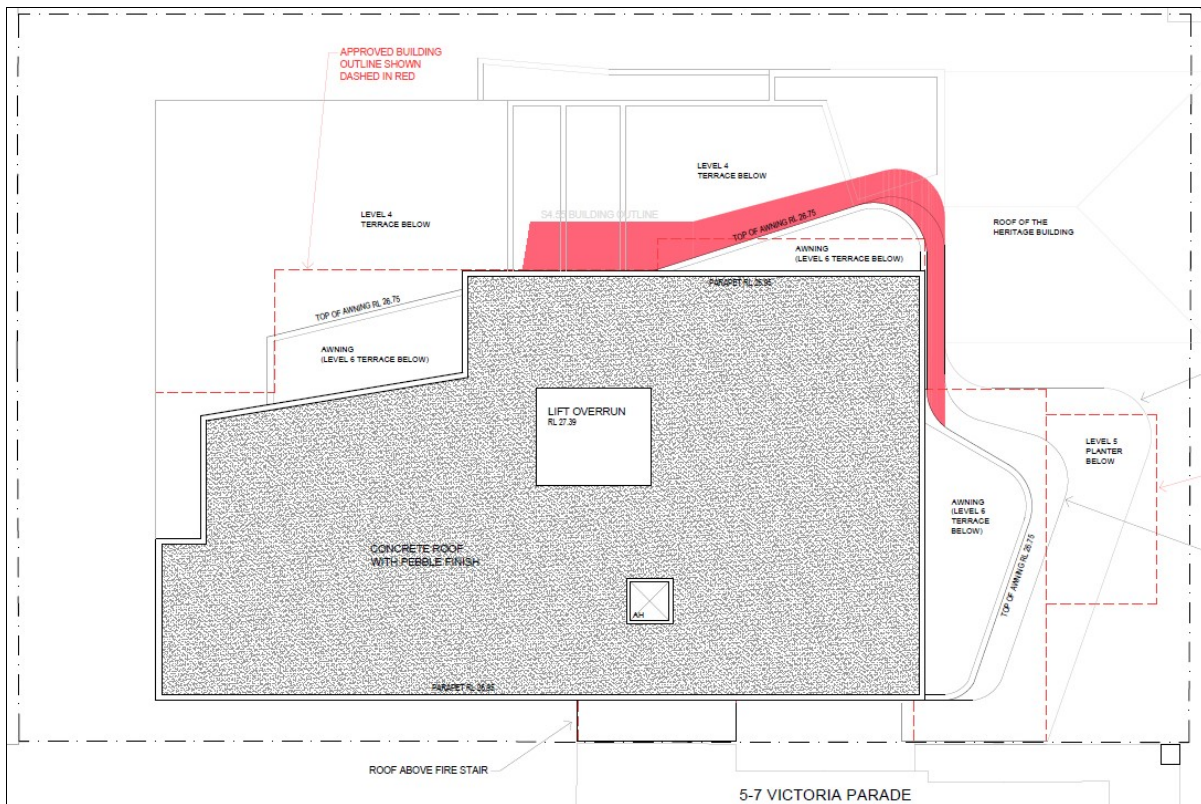


Image: Plan view of building and balcony outer balcony elements revised (shaded) as part modification assessment with approved building DA220/2013 outline also shown in dotted red.

The proposal includes a further non-compliance to the height of buildings development standard however at roof level this does not substantially change the existing view impacts. The height variation generally being more relevant levels 3 to 6 (in particular podium level) where the comparative floor levels increase in height with each storey. The modification seeks to respond to this by a degree of 'trade off' whereby some elements have less impact on view lines and other elements that intrude are shaped to minimise any additional impact. This issue is addressed by conditions whereby it is considered the raised podium will potentially trigger further impacts the view toward St Patricks Estate with structures / large items across the wide terrace area. View east along the rear setback and along Victoria Parade are considered to be substantially the same impact.

Conclusion on the view assessment.

A detailed view analysis in Sheets 1 to 6 has been provided to indicate the main view lines at critical levels and angles for adjacent land. Site inspections and photos on file also provide overall view considerations from surrounding land at appropriate vantage points. The modification plans dated 21.7.2021 have reduced the width of balconies and subject to conditions do not create unreasonable change to the view impacts given the approved setbacks and building configuration approved under DA220/2013 by the NSW LEC.

This modification assessment considers that the amended plans dated 21.7.2021 and view analysis made with the re-submitted design achieves a more skillful design with no unreasonable impact on views, subject to condition inclusive of the the non-complying height elements, balcony shapes and outer wall setbacks.

3.7 Stormwater Management

Councils Development Engineers are satisfied with the amended stormwater plans with the modification to manage all site water including on-site detention and cross flow management from adjacent land that

may enter the site in draining / directing water toward Victoria Parade and Council's stormwater infrastructure.

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

The modification proposal is considered pursuant to *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)* as follows:

- The requirement of Clause 4.6 of the LEP do not apply to the modification of consent as detailed within this report under the heading 'Manly LEP'. With respect to the additional considerations under this clause of the DCP the wall height increase has been reduced by the revised plans dated 21.7.2021 in order to lower the overall extent of the additional height variation. This has also lowered the lift overrun to RL27.39 and the position of the lift overrun above the roof does not create any unreasonable impacts on the streetscape, views or overshadowing general building bulk.
- The building utilizes a flat roof form and the edge of the roof areas over the balconies has been made narrower to provide a thinner profile when viewed from adjacent land or the public domain. Overall the building height change for the modification is considered to be acceptable under the circumstances of the case without creating any unreasonable environmental impact or precedent.

4.1.3 Floor Space Ratio (FSR)

The modification proposal and additional building height has been considered pursuant to *clause 4.2.2.1 Exceptions to Height for Design Excellence* and the merit assessment by way of Section 4.56 in that Clause 4.6 of the LEP does not apply. Considerations of the circumstances, including "reasonableness" of the FSR modification is detailed within this report under the heading "Height of Buildings" within this report.

- *To ensure the scale of development does not obscure important landscape features.*

Comment

The residential component of the modified proposal has 1,397sqm residential floor space (but with less overall floor area) and the approved NSW LEC scheme having 1,383sqm of residential floor area (with more commercial / retail floor area). The additional residential floor area has been gained by reshaping the wall line across selected corner sections of the building, mainly along the eastern (side) elevation and selected elements of the front elevation. The building maintains consistency with the approved overall scale and external shape with regard views and general urban outlook as per the approved scheme under DA220/2013. This includes the outlook along Victoria Parade toward Manly Beachfront area and Harbour, including landscape street trees, and views south east toward St Patrick's Estate.

- *To minimise disruption to views to adjacent and nearby development.*

Comment

The building maintains consistency with the approved overall scale and external shape with regard views along Victoria Parade toward Manly Beachfront area, the Harbour Esplanade including landscape street trees and views south east toward St Patrick's Estate. Overall the non-compliance with the 25% FSR requirements has no impact on views.

- *To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

Comment

The proposal maintains adequate sunlight / natural light for private open space within the development and is consistent approved scheme. The reshaping of building and changes to the floor space areas in residential apartments, including floor level changes has a minor change to sunlight penetration. The internal change to FSR has no adverse change on solar access and sunlight penetration as the outside elements of the terrace structures (such as balustrades, planter boxes and the like) create some minor changes to direct sunlight impacts. This issue is address under the heading *3.4.1 Sunlight Access and Overshadowing* within this report.

In addressing FSR as part of the modification, this also includes broader considerations of the environmental planning grounds to consider the non-compliance with FSR 25% balance being further modified of consent and the objectives of Clause 4.4 of the Manly LEP 2013.

The objectives of this Clause 4.4 Floor Space Ratio are as follows:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

The modification complies principle FSR requirement of "3:1" and the reconfigured floor areas, including restyling of the building maintains consistency with the Objectives of the B2 Local Centre. The modification does not seek to increase the overall residential floor space component as per amended plans dated 21.7.2021. Therefore the FSR changes under the modification application are is supported and considered to be consistent with that approved by the NSW LEC under DA220/2013.

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

The numerical requirement of the Apartment Design Guide are addressed within this report under the heading "SEPP 65" and the Manly DCP objectives (where relevant) under *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation* are considered as follows:

- *To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

Comment:

The modification maintains retail shop fronts to the street to activate the street edge and residential outlook for the upper storeys. The proportions of the building floor space remain consistent with that approved under DA220/2013. The reshaping and changes to balconies assist to integrate with the

restyled curved corners to the building introduced with the modification. The styling of the building has been reviewed DSAP and appropriate changes made by the applicant with amended plans dated 21 July 2021.

- *To ensure and enhance local amenity by providing privacy; access to natural light, sunshine and air movement; and facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*

Comment:

The proposal remains consistent with ensuring no unreasonable impact on views, privacy, overshadowing, light and ventilation by maintaining consistent setbacks as per the approved plans. Conditions are however included to optimise issues identified with regard to privacy, natural light and views due to minor elements of the building associated with selected windows, balustrades and minor wall alignments.

- *Addressing character to the streetscape including the provision of adequate space between building and setback from its various property boundaries.*

Comment:

The modification maintains similar format and configuration to that approved by the NSW LEC for DA220/2013 in terms of the retention of the heritage component for No.11 Victoria Parade, ground floor area, smaller units at the lower levels and larger apartments on the upper floors. The modification seeks to restyle the building external materials and finishes, including by the use of curved / reshaped elements for balconies and elected elements. The street includes a broad range of building styles and the revised materials as shown in "Design Issue 3". Overall the modification proposal maintains consistent setbacks and spatial separation as per the approved plans and addresses the streetscape character in accordance with Manly DCP.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The modification proposal is considered with regard to the objective and requirement of *Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)* as follows:

- *To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

Comment:

The modification includes one disabled persons space, however with the reduced number of Units and number of visitor spaces a reconfiguration of the basement parking would enable two accessible spaces with a centre shared zone. This is warranted given the building contained 'adaptable' units, internal lift access and 2 by commercial with 2 x retail spaces. The additional basement level and reduced density enables better parking arrangements. This issue is addressed by conditions and the deletion of the car stacker for conventional style basement parking arrangements is safer and more convenient.

- *To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

Comment:

The same overall number of parking spaces and visitor spaces is provided for the modification, which is a net gain from the existing situation in that the site has no off-street parking. The modification remains

consistent with this objective.

- *To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape*

Comment:

The driveway location and footpath crossover area remains consistent with the approved plans and is substantially the same when viewed from the street. The crossover area and driveway is required to comply with Australian Standards to ensure adequate safety and access.

- *To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

Comment:

The new basement level has been subject to Geotechnical considerations by an Expert Consulting Engineer and appropriate recommendations are provided in the report prepared by Crozier Consulting Engineers. In addition conditions regarding engineering works, geotechnical stability, dilapidation, and groundwater conditions (General Terms of Approval from NSW Primary Industries) remain in place as part of the development consent. Therefore the modification remains consistent with this objective.

- *To ensure the width and number of footpath crossings is minimised.*

Comment:

The proposed modification remains consistent with this objective.

- *To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

Comment:

The proposed modification remains consistent with this objective.

- *To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

The proposed modification remains consistent with this objective subject to the inclusion of a bicycle rack (for residents) within the basement to enable convenient secure storage for each Unit and a bicycle rack near the street entry area for visitors to the building. The approved plans for DA220/2013 includes basement bicycle storage. The revised plans (dated 21.4.2021) for 15 Units enables more space in the basement for conventional parking, accessible parking, bicycle storage and storage cages that do not impinge on the parking spaces / vehicle clearance required.

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

The modification proposal and additional building height has been considered pursuant to *clause 4.2.2.1 Exceptions to Height for Design Excellence* and the merit assessment by way of Section 4.56 in that Clause 4.6 of the LEP does not apply. Considerations of the circumstances, including

"reasonableness" of the height modification is detailed within this report under the heading "Height of Buildings" within this report.

In summary, this also includes broader considerations of the environmental planning grounds to justify contravening the development standard (LEP clause 4.6(3)) by a modification of consent and the design principles at paragraph 3.1.3.1 *Design Principles* in this DCP. The height variation is supported, subject to conditions applying to the amended plans, dated 21.7.2021.

4.2.3 Setbacks Controls in LEP Zones B1 and B2

The modification (amended) plans maintain consistency with the approved development consent plans pursuant to this clause to achieve objectives in this plan to ensure unobstructed access between the private and public domain and maintain continuity in building to the street boundary.

4.2.5.1 Design for Townscape

The site is within the area covered by *Schedule 2 - Map A* of the Manly DCP. In this regard, additional townscape objectives and requirements for Manly Town Centre and Surrounds that apply, are considered as follows:

- *Maintain the predominant pattern of narrow fronted buildings within the town centre with new buildings incorporating modulation of the street wall such as recesses or modulation in the building facade to visually reduce the length and perceived bulk of the street wall.*

Comment:

The modification maintains the approved layout of two narrow retail frontages (being No.11 Victoria Parade heritage element retained) and the new retail / driveway access to replace No.9 Victoria Parade. The modification retains appropriate modulation and recessed elements, the use of balconies, cladding, windows and other external elements to provide visual interest to wall plane and reduce the perceived bulk toward the street setback.

- *Maintain existing setbacks. This is considered in terms of sunlight and privacy including spatial separation.*

Comment:

No significant change to setbacks is proposed with the modification and the reshaping / restyling of selected wall elements and windows has ensured that privacy and overshadowing is substantially the same as that approved under DA220/2013 by the NSW LEC. Conditions are however included from minor changes to selected elements to assist with optimizing natural light and sunlight amenity where the identified modifications can better respond to those considerations for adjacent property. Overall the modification application is consistent with this objective.

- *New development to enhance townscape characteristics, disregarding existing unsympathetic buildings, including heritage considerations.*

Comment:

The modification application is based on an existing development consent and is therefore not a "new development". The changes to the appearance of the building is however new in terms of styling, materials and the reconfigured floor layouts. Overall the building maintains consistency with the

townscape characteristics of Manly and will retain the heritage components of No.11 Victoria Parade. Heritage conditions for the existing development consent are to remain in place as part of the modification. The external colours and materials have been reviewed and other design considerations made to address DSAP review of the modification proposal to ensure consistency with this objective.

4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre

Consideration of the appropriate heights within the maximum Building Height development standard and exceptions to the standard in the LEP includes the following:

- a) Whether the final building height including any architectural embellishments adversely dominate the heights of end (corner) buildings in the same street block or that of adjoining buildings.*
- b) Whether the proposed development successfully demonstrates the most appropriate relationship to adjoining development in terms of fulfilling the Council's townscape objectives. New development provides opportunities to achieve the maximum height of building in the centre of the street blocks to obtain views and outlook over buildings on the block edge at a lower height.*
- c) Whether new development should be constructed to the same building envelope as existing buildings on a site in order to maintain interest and variety, provided the other objectives and requirements (including FSR) of this plan are achieved.*
- d) Whether new buildings equate with both the overall height as well as the level of each floor of adjoining buildings and in relation to particular architectural details like parapet details and with particular regard to important end-buildings in the particular street block.*

The design quality and visual aesthetics of modified development is considered pursuant to the additional DCP objectives above.

Comment

- The height, form and massing of the development is compatible that established by surrounding residential and commercial buildings.
- The modification maintains a suitable relationship to the streetscape including the retained heritage section, location of driveway access and active street frontage.
- The proposed front and side boundary setbacks are consistent with those originally approved by the NSW LEC with DA220/21, including considerations of views, solar access and the distribution of floor space on the site.
- Development incorporates a suitable change / restyling of materials and finishes providing for a visually interesting building presentation detailed as per "Revision 3" material schedule.
- The modification maintains appropriate levels of privacy, sunlight and view sharing to surrounding development with regard to floor to floor levels, subject to conditions as recommended.

4.4.1 Demolition

Existing conditions of consent address dilapidation risk and obligations to ensure adequate protection during construction. This includes requirements to protect and retain the heritage front section of No.11 Victoria Parade. The change to the basement depth does not fundamentally alter the site site preparation works required including civil engineering protection and geotechnical support to protect adjacent property assets.

4.4.5 Earthworks (Excavation and Filling)

The modification has been submitted with a detailed Geotechnical Assessment Report addressing the geological conditions of the site, expected site conditions at sub-ground level and civil engineering precautions to be made for new basement design and building work. The existing development consent includes a range of conditions addressed geotechnical issues as per the DA2020/2013 approved by the

NSW LEC. These conditioned requirements remain intact for the modification and are subject to the recommendations provided *Crozier Geotechnical Consultants*.

The modified proposal remains consistent with Clause 4.5 Earthworks of the DCP and as detailed under Clause 6.2(3)(a) to (h) of the Manly LEP, where applicable.

5.4.1 Foreshore Scenic Protection Area

Manly LEP (clause 6.9) designates land in the *Foreshore Scenic Protection Area* as shown on the LEP Foreshore Scenic Protection Area Map to protect visual aesthetic amenity and views both to and from Sydney Harbour, the Pacific Ocean and the Manly foreshore.

Comment

- The modifications to the building including the increased height, change in materials and overall building profile is not readily visible from either Sydney Harbour or the Manly Foreshore and ocean due to the density of surrounding development, street trees and separation distance. The external colours and materials of the building are sympathetic to the existing built surroundings so that parts of the building that may be visible from a distance blend with the overall urban environment without creating an adverse contrast when viewed from the ocean foreshore or harbour area.

The modified proposal consistent with the objectives of the Foreshore Scenic Protection Area, including the additional matters for consideration pursuant to Clause 5.4.1 of the DCP.

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 2021

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 2000;
- 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

The relevant judgments (originating with North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163 established that a "Section 96" (now "Section 4.55 / 4.56 modification") is a 'free-standing provision', meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". What this means is that it is this 'Section' for 'modification' itself which authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 (formerly Section 96) is a broad power to approve, subject to its own stand-alone tests (such as the "substantially the same" test, and a requirement to consider all relevant matters for consideration).

Section 4.55 / S4.56 does not rely upon having any Clause 4.6 variation (or formerly SEPP 1) in order to enliven that power to approve. "Clause 4.6" is negated from being applicable under a modification of consent.

Pursuant to the above the proposed height under the modification is assessed on merit by addressing the objectives of the zone and the height controls under Manly LEP. Related considerations of views, overshadowing, amenity and streetscape are discussed in context with the relevant objectives and under the relevant specific Manly DCP controls. Consideration of related submission issues (in the public interest) also forms part of this merit assessment.

The subject 'Section 4.56' Modification of development consent No.DA220/2013, determined by the *NSW Land & Environment Court*, has been assessed as being substantially the same for the purposes of overall context of the approved scheme. The reconfiguration of the proposal involves less dwellings and more convenient basement parking with revised layouts for the ground floor and residential units.

Principal considerations under SEPP 65 (the ADG), MLEP and MDCP have been addressed to ensure minimal change to impacts of solar access amenity, privacy, views, parking, noise and construction impacts, heritage and environmental considerations for neighbouring properties. Generally the proposal remains consistent with the reasons for granting of approval by the NSW LEC, subject to the existing conditions of consent and the amended plans, dated 21 July 2021.

The modification has been subject to changes to the overall extent of building height non-compliance including some reconfiguration / restyling to selected external elements of balconies, awnings, windows, planter boxes and the like. In modifying the development the applicant has also maintained compliance with the overall FSR, but altered the 25% retail proportional requirement to 17.7%. The variation to the building height and FSR proportions is supported on merit. The modification application has addressed Council's *Design and Sustainability Advisory Panel* recommendations with appropriate

design alternatives or supporting information.

The concerns raised within public submissions have been considered including views, privacy (visual / acoustic), bulk, solar access, ventilation, construction dilapidation, operational management and the like, including consideration of past submissions. Issues are dealt with by conditions (existing or as modified) and do not warrant refusal of the application.

The streetscape design of the building, landscape, internal layout and residential amenity is suitable to meet the Manly LEP, DCP and SEPP 65 / ADG in terms of an appropriate design response to ensure no unreasonable amenity impacts to surrounding land or for occupants within the development. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0039 for Modification of Court Consent DA0220/2013 under s4.56 of the EP&A Act, granted for demolition works, construction of a mixed use development and strata subdivision on land at Lot CP SP 31058, 11 Victoria Parade, MANLY, Lot 1 DP 77358, 9 Victoria Parade, MANLY, subject to the conditions printed below:

A. Add Condition No.DA1A - Modification of Consent - Approved Plans and supporting Documentation, to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A1.00 Site Plan - Revision 2	Jul 2020	Platform Architects
A1.01a Second Basement Plan - Revision 2	Jul 2020	Platform Architects
A1.01b First Basement Plan - Revision 2	Jul 2020	Platform Architects
A1.02 Ground Floor Plan - Revision 4	21.7.2021	Platform Architects
A1.03 First Floor Plan - Revision 4	21.7.2021	Platform Architects
A1.04 Second Floor Plan - Revision 4	21.7.2021	Platform Architects
A1.05 Third Floor Plan - Revision 4	21.7.2021	Platform Architects
A1.06 Fourth Floor Plan - Revision 4	21.7.2021	Platform Architects
A1.07 Fifth Floor Plan - Revision 4	21.7.2021	Platform Architects
A1.08 Sixth Floor Plan - Revision 4	21.7.2021	Platform Architects
A1.09 Roof Plan - Revision 4	21.7.2021	Platform Architects
A1.10 Adaptable Layouts - Revision 2	Jul 2020	Platform Architects
A2.01 Southeast Elevation - Revision 4	21.7.2021	Platform Architects
A2.02 Southwest Elevation - Revision 4	21.7.2021	Platform Architects

A2.03 Northwest Elevation - Revision 4	21.7.2021	Platform Architects
A4.04 Northeast Elevation - Revision 4	21.7.2021	Platform Architects
A3.02 Cross Section - Revision 4	21.7.2021	Platform Architects
External Finishes Schedule - Revision 3	21.7.2021	Platform Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
C-0000 Locality Plan and Drawing Index - Revision A	1.9.2020	BG & E
C-0200 Concept Stormwater Management Plan - Revision C	22.7.2021	BG & E

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 499050M_02	30.11.2020	AGA Consultants
Report on Geotechnical Site Investigation 2013-141.2 (All report recommendations with Sections 5 and 6)	11.9.2020	Crozier Geotechnical Consultants
Heritage Impact Statement (Sections 8.6 to 8.21 and Sections 9.1 to 9.4)	Dec 2019	Architectural Projects

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Sheet 1 of 2 Landscape Plan Ground Floor and Level 1 - Issue A	23.9.2020	Paul Scrivener Landscape Architecture
Sheet 2 of 2 Landscape Plan Level 4 and 5 - Issue A	23.9.2020	Paul Scrivener Landscape Architecture

Waste / Sediment Erosion Management Plan		
Drawing No.	Dated	Prepared By
C-0700 Erosion and Sediment Control Plan - Revision A	1.9.2020	BG & E
C-0710 Erosion and Sediment Control Details	1.9.2020	BG & E

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Delete Condition No. ANS01, to read as follows:

"ANS01 - DELETED"

C. Modify Condition No. ANS08, to read as follows:

"ANS08 Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The design and construction recommendations and risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by *Crozier Geotechnical Consultants* dated 11.9.2020 are to be incorporated into the construction plans prior to issue of the Construction Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately."

D. Modify Condition No. ANS10, to read as follows

" ANS10 Requirements of Other Department, Authority or Service Providers

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	11.3.2021
Natural Resource Access Regulator	NRAR Referral Response	18.3.2021

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

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

E. Delete Condition No. ANS13, to read as follows:

"ANS13 - DELETED"

F. Modify Condition No.ANS15, to read as follows:

"ANS15 Acid Sulfate Soils

As recommended in the report 11.9.2020 submitted by *Crozier*, project number: 2013-141.2, additional soil testing is to occur after demolition. Should these test results identify the presence of Acid Sulfate Soils an Acid Sulfate Soils Management Plan in accordance with the *Acid Sulfate Soils Manual* is to be submitted to Council / Accredited Certifier prior to the commencement of bulk excavation.

Reason: Manage the risks associated with bulk excavation."

G. Delete Condition No.5 (2BM03), to read as follows:

"5 (2BM03) - DELETED"

H. Modify condition No.15 (2DS01), to read as follows:

"15. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003, and generally in accordance with the concept drainage plans prepared by BG& E consultant, project no S20059, Drawing no. C-0000, C- 0200 and C-0700 and 1/9/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

I. Modify condition No. 16 (2DS02), to read as follows:

"16. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the *Roads Act 1993*. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property."

J. Modify condition No.20 (2FP02), to read as follows:

"20. Vehicle Crossings

The Applicant is to construct a vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

K. Modify condition No. 24 (2HT02), to read as follows:

24 Heritage Consultation

The applicant at their cost is to commission an experience heritage consultant to work with the consultant team throughout the design development, contract documentation and construction stages of the project. The heritage consultant is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The heritage consultant is to be provided with full access to the site, in particular during the demolition phase of the development, and authorised by the applicant to respond directly to Northern Beaches Council where information or clarification is required regarding the resolution of heritage issues throughout the project.

Written details of the engagement of the experienced heritage consultant must be submitted to Council prior to issuing any Construction Certificate works on the site.

Reason: To ensure that all matters relating to significant fabric and spaces are resolved using best practice for heritage conservation."

L. Modify Condition No.26 (2HT04), to read as follows:

"26 External Finishes

The external finishes used for construction is to be in accordance with drawing reference: *External Finishes Schedule s4.55 Updated Revision 3*. On the heritage building the external colour scheme for surfaces intended for painting is to be based where possible on physical and documentary evidence in keeping with the architectural style and period of the original building.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the proposed colour scheme is appropriate to the type and style of the building and the surrounding area."

M. Delete Condition No.32 (2MS03), to read as follows:

"32 (2MS03) -DELETED"

N. Delete Condition No.42 (2WM05), to read as follows:

"42 (2WM05) -DELETED"

O. Modify condition No.43A (2US01), to read as follows:

"43A Residential Development Contributions

A development contribution is to be paid for the provision of or increase to the demand for public amenities and public services as a consequence of the residential development of the site. The contribution for the residential component of this development is **\$240,000.00** being \$20,000 per additional dwelling (based on 12 additional dwellings).

This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from this development."

P. Modify condition No.43B (2US02), to read as follows:

"43B Commercial Development Contributions.

A development contribution is to be paid for the provision, extension or augmentation of traffic and parking, environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of the non-residential development of the site.

The non-residential contribution for this development is **\$5,222.84**. This contribution will be adjusted by CPI at time of payment in accordance with the Manly Section 94 Contributions Plan.

The calculation for this contribution is as follows:

(Additional floorspace = 19.8sqm
\$26,378.20 x 19.8sqm divided by 100 = \$5,222.84)

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from this development."

Q. Add condition No.43C Basement carparking, to read as follows:

"43C Basement carparking

The basement carparking layout is to be reconfigured to ensure a minimum of:

- Six (6) visitor car spaces (including 1 x AS1428 compliant space) shared for the building; and
- Fifteen (15) residential car spaces (allocated as one (1) for each apartment, with at least one (1) of the 15 residential car spaces being AS1428 compliant).

Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Maintain consistency with the parking requirements including the Apartment Design Guide."

R. Add condition No.43D Bicycle Racks and Storage, to read as follows:

"43D Bicycle racks and Storage

Provision of bicycle racks and storage:

- A fifteen (15) slot bicycle rack in the basement (being a minimum for 1 bicycle per apartment); and
- Fifteen (15) storage cages in the basement (being a minimum 8 cubic metres storage for each

- apartment); and
- One (1) 'visitor' bike rack to be provided in front of "Retail 1".

Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Maintain consistency with the parking requirements including the Apartment Design Guide."

S. Add condition No.43E 13 Terrace Areas - Unit 12 and 13, to read as follows:

"43E Terrace Areas - Unit 12 and 13

- The eastern side terrace area, planter box structures and balustrade for Unit 12 (RL17.45) is to be setback 5.0m from the side boundary with No.13 Victoria Parade; and
- The eastern side terrace area, planter box structures and balustrade for Unit 13 (RL17.45) is to be setback 3.5m from the side boundary with No.13 Victoria Parade.

Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To minimise view impacts toward St Patricks Estate from No.2 Wentworth Parade and minimise amenity (privacy & natural light impacts) on living areas / bedroom areas within No.13 Victoria Parade."

T. Add condition No.43F Window Glazing, to read as follows:

"43F Window Glazing

- All windows marked "FIX" for Units 15, 14, 12, 8, and 1 on the western side elevation facing No.5-7 Victoria Parade are use translucent glazing.

Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To minimise privacy impacts between adjacent dwellings."

U. Add condition No.43G Light Well, to read as follows:

"43G Light Well

- The wall alignment position / shape for the light well (Units 6, 7, 11, & 13) is remain as per the approved plans "S34(C) plans".

Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain the same light / air well alignment for amenity to kitchen / bathroom area windows within No. 5-7 Victoria Parade"

V. Add condition No.43H Level 1 and 2 Street Facade, to read as follows:

"43H Level 1 and 2 street facade

- The forward corner of the curved front balcony and centre (inner corner) curved wall corner fronting Victoria Parade for Unit 6 and Unit 7 are to be straightened to regular angle corners to be more consistent with the adjacent heritage element to be retained. (The outward angle alignment of the front balcony edge is not required to change); and
- The front balcony for Unit 10 is required to have a 2.0m minimum depth dimension. The compliant width is to be provided without further intrusion forward into the hipped roof section of the heritage building retained.

Details to be provided to the satisfaction of the Certifying Authority prior to the issue of the construction certificate.

Reason: Heritage and streetscape considerations."

W. Modify condition No.79 (5DS03), to read as follows:

"79. Works Supervision

The Applicant shall ensure all civil works, including excavation, approved in this consent are supervised by an appropriately qualified and practising Civil Engineer and Geotechnical Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of building and safety standard."

X. Modify condition No.80 (5DS02), to read as follows:

"80. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard."

Y. Add Condition No.99A Landscape Completion, to read as follows:

"99A Landscape Completion

Landscaping is to be implemented in accordance with the approved Landscape Plan.

Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity."

Z. Add Condition No.99B Landscape Maintenance, to read as follows:

"99B. Landscape Maintenance

a) If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

b) A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

c) All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity."

AA. Add Condition No. 99C Study / Office Rooms, to read as follows:

"99C Study / Office Rooms

Any rooms marked as "Study" or "Office" rooms within the residential apartments on the approved plans dated 21.7.2021, are not to be used / converted for use as bedrooms. This is to be enforced in the building by-laws.

Details are to be provided to the satisfaction of the Principal Certifying Authority prior to final occupation / completion.

Reason: Compliance with approved plans and limited available natural light / ventilation as per National Construction Code standards."

AB. Add Condition No.99D Commercial Waste and Recycling Storage, to read as follows:

"99D Commercial Waste and Recycling Storage

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed."

AC. Add Condition No.99E Access to Residential Waste Storage Room for Service Staff, to read as follows:

"99E Access to Residential Waste Storage Room for Service Staff

The external door (service door) must be able to open flat against the wall of the building and be able to be latched open in this position.

Reason: To ensure unimpeded access to the bin storage room whilst servicing bins."

AD. Add Condition No.99F Garbage and Recycling Facilities, to read as follows:

"99F. Garbage and Recycling Facilities

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning. Waste room floors shall be graded and drained to an approved *Sydney Water* drainage system. Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area."

AE. Add Condition No.99G Waste and Recycling Facilities Certificate of Compliance, to read as follows:

"99G Waste and Recycling Facilities Certificate of Compliance

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

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

Reason: To ensure waste and recycling facilities are provided."

AF. Add Condition No.99H Waste/Recycling Compliance Documentation, to read as follows:

"99H Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled."

AG. Add Condition No.99I Positive Covenant for Council and Contractor Indemnity, to read as follows:

"99I. Positive Covenant for Council and Contractor Indemnity

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities."

AH. Add Condition No.99J Authorisation of Legal Documentation Required for Waste Services, to read as follows:

"99J. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land."

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

Signed

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

Rebecca Englund, Manager Development Assessments

Peter Robinson, Executive Manager Development Assessment