

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0023
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 30 DP 2610, 38 Alma Street CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent N164/10 granted for Alterations and additions to an existing dwelling including second storey addition extend basement level swimming pool double garage decks and landscaping
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Geoffrey Peter Kendall
Applicant:	Geoffrey Peter Kendall

Application Lodged:	22/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/02/2021 to 12/03/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application seeks retrospective approval for the amendments to development application **10.2010.164.1**, as well as modifications - **Mod2019/0427** and **Mod2019/0542**.

The architectural plans accompanying the application were not consistent with the lodgement requirements of Council, nor of a standard which allows Council to undertake a full detailed assessment of the application.

As a result, a full master set was submitted to Council that were to scale, with a site plan, elevations and sections. These plans were utilised for the assessment below.

In accordance with the Northern Beaches Council Community Participation Plans the new master set was not required to be re-notified.

Proposed Works

The retrospective works as part of the application are as follows:

- New bathroom within the storage basement level
- The entry has been amended to address those requirements of condition ANS 03.5 & 30.6 (external access stairs, the main pedestrian entry in the previous design and the entry arch have been deleted)
- Reconfiguration of the ground floor to display two (2) bedrooms at this level, not three (3), new walk in robe, and ensuites relocated
- Entry/Foyer external wall aligned with wall above
- Planter box on the first and second floor have been replaced with a glass balustrades to satisfy condition ANS 03.3
- Planter box at ground floor has been deleted
- Pool and associated toilet layout amended to satisfy condition ANS 03.4
- Existing kitchen and lounge external walls now retained
- New window to satisfy condition ANS 3.01
- Second floor guest bedroom and ensuite layout changed, with the ensuite moved to the opposite side allowing space for a walk in robe
- Second floor guest bedroom external door replaced with window with the addition of a side door
- Deletion of the separate water closet
- The proposed a pergola over the first floor terrace removed and replaced with a non trafficable roof

As a result of the proposed amendments, conditions ANS 01, ANS 02, ANS 03, ANS 06 and ANS 07 are required to be deleted from the consent.

The modification seeks to remove previously applied design change conditions as a result of these required amendments being reflected within the submitted plans.

The satisfaction of the proposed conditions to be removed is as follows:

Condition ANS01

All encroachments of the existing dwelling at No.38 Alma Street, into No.29 Adelaide Street must be removed and the rear setback must be in accordance with the approved plans prior to the issue of the Occupation Certificate.

Reason: To ensure development occurs in an orderly manner in accordance with planning legislation.

The encroachment in Figure 1 below (highlighted in red), has been removed from the approved plans as demonstrated in the submitted plans for MOD2021/0023, see Figure 2.

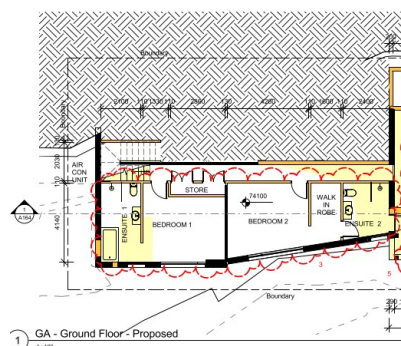
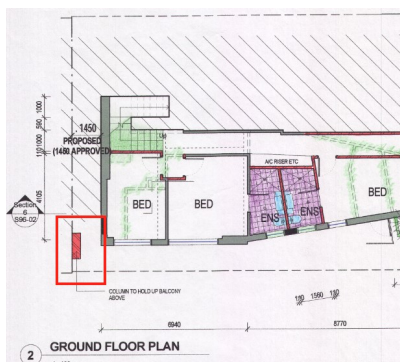


Figure 1: Approved plans (N164/10/2) encroachment to be removed via condition shown in red

Figure 2: Submitted plans (Mod2021/0025) with no encroachment.

ANS02

The northern window (W4) of bedroom 4 is to be glazed in translucent glass to a height of 1.65m above finished floor level and a 1.65m high visual privacy screen is to be provided to the northern end of balcony 1 for the first 2.0m from the external corner of the laundry, plans are to be suitably amended prior to issue of the Construction Certificate.

Reason: To reduce privacy impacts on adjoining and nearby properties.

Condition ANS02 has been on the subsequent Modifications approval by error.

Window, W4 of bedroom 4 (highlighted in red below) existed only in the original version of the plans (25/5/2010) and was deleted on the subsequent modification plans dated 19/11/2014, however the condition had never been deleted despite the window not existing on the plans.

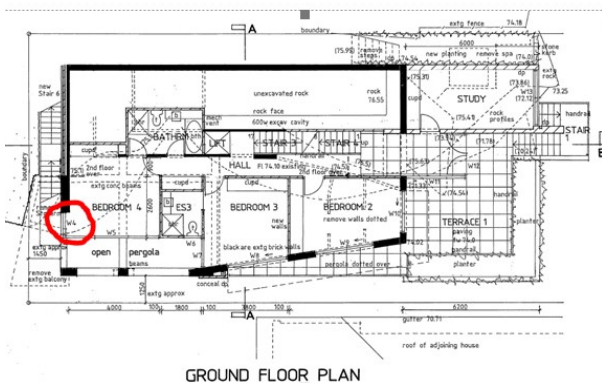


Figure 3: Original plans demonstrating W4.

Condition ANS03

Plans are to be amended to include the following changes prior to the issue of any construction certificate with an amended set of plans to be supplied to Council for information purposes:

ANS03.1. The section of the building that contains the access stairs and associated walls located above R.L.77.15 (FFL) to the front of the first floor level to the South Eastern corner of the building is to be modified to comprise clear glazing above R.L.78.5. This should be designed to allow for views through this section of the building for the adjoining side window to the neighbouring property at No.34 Alma Street;

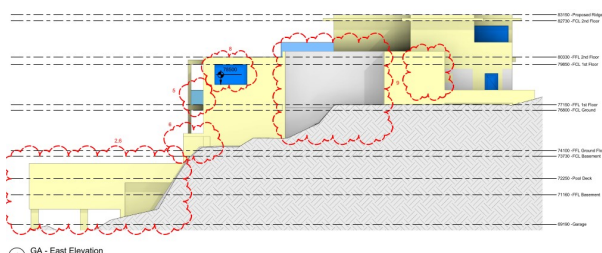


Figure 4: New glazed window within the south eastern corner as per condition

ANS03.2 The roofing above area described in 1. above is to be amended to include a flat (max. 5 degree pitch for drainage) roof not exceeding R.L.77.3;

The amendment to this conditioned to display a roof height of RL 80.0330 was approved in

MOD2019/0542, as demonstrated in figure 5 below.

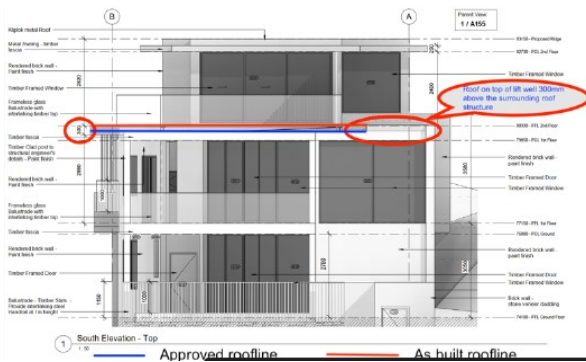


Figure 5: Approved roof height within MOD2019/0542.

ANS 03.3. Clear glazed balustrade is to be included to the front terrace area at R.L.77.15 (first floor level);

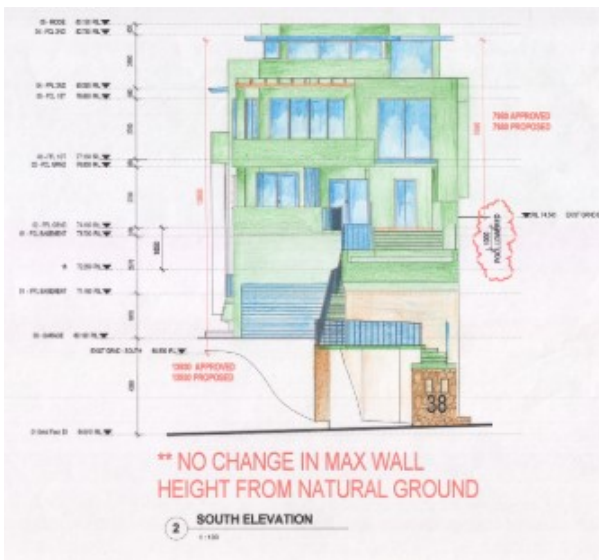


Figure 6: Approved plans with no glazing. glazed balustrade to comply with condition.



Figure 7: Submitted plans demonstrating clear

ANS03.4. The pool level is to be reduced from R.L.73.1 down to R.L.72.25 with the proposed external stairs leading to the dwelling to the western side of the building deleted from the scheme.

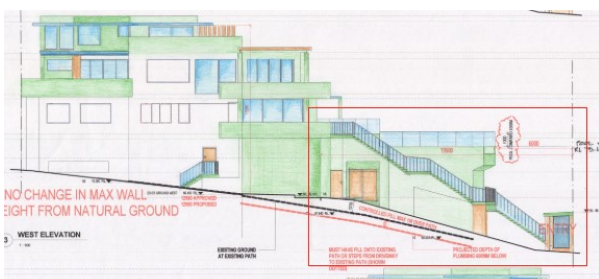


Figure 8: Stairs to be removed shown in red. 72.25, removed stairs to comply with condition.

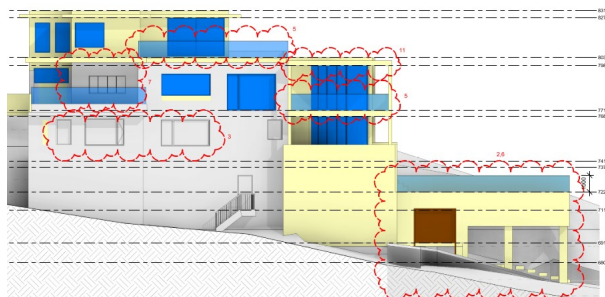


Figure 9: Submitted plans with the pool level at RL

ANS03.5. A set of stairs leading to the entry level is to be configured leading to the entry level starting

from ground level below the front edge of the elevated pool leading from beneath the pool upwards to access the deck area.

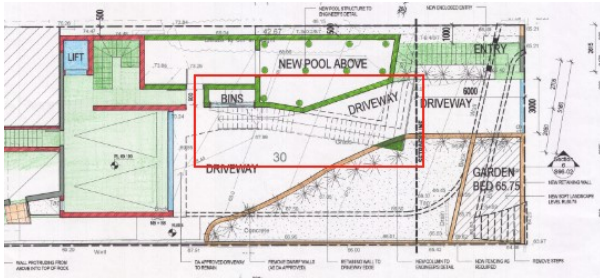


Figure 10: Previous stairway highlighted in red.

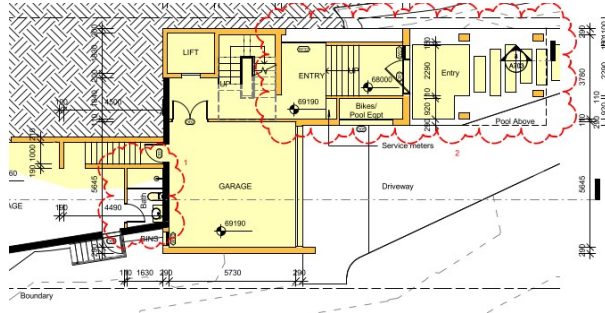


Figure 11: Submitted plans with new stair design to comply with condition.

ANS 03.6. The pool and associated structures are to be located at least 8.5m from the front property boundary and relocated further into the site in a northerly direction to align with adjoining elevated pool to No.34 Alma Street;

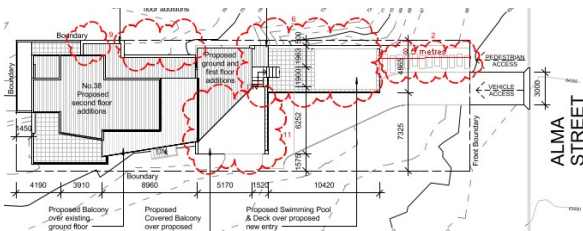


Figure 11: Front setback of the pool and associated structures 8.5m from the Alma Street front boundary.

ANS 03.7. The proposed entry arch at the front boundary is to be reduced in width to 2m with the mailbox element retained as proposed. The arch structure is to be open on both sides (front and rear) serving as a shelter only.

Figure 8 and 9 above demonstrate the entry arch removal to comply with the condition.

ANS06

All planter boxes and landscape over basement and planting on slab shall have a minimum soil depth of 250mm for turf or ground covers, 500mm for shrubs and 1m for trees excluding drainage layers and mulch and include an irrigation system.

Reason: To ensure the longevity and effectiveness of the planting scheme as proposed and provide amenity to the streetscape and subject property.

Planter boxes have been removed and replaced with glass balustrading, see Figure 6 & 7.

ANS07 (2LD01)

Details must be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over which landscaping is being provided.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided.

Planter boxes have been removed and replaced with glass balustrading, see Figure 6 & 7. As a result waterproofing and drainage of the concrete slabs over which landscaping is being provided is no longer required.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.2 Privacy and Security
 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 - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 30 DP 2610 , 38 Alma Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of an allotment located on the northern side of Alma Street. The site is regular in shape with a size area of 520sqm. The frontage measures 12.9m along Alma Street with a depth of 42.67m. The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site that is under construction. The site has a slope from Alma Street up toward the rear of the site and contains various vegetation across the site. Adjoining and surrounding development is characterised by residential development within a landscape setting.

Map:



SITE HISTORY

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

- **DA446/2008** - Part demolition of existing dwelling, alterations & additions to existing dwelling including a new fourth (4th) level and swimming pool fronting 38 Alma Street and construction of a three (3) level dwelling and swimming pool fronting 29 Adelaide Street deferred by DAU for further consideration.
- **DA164/2010** - Alterations and additions to an existing dwelling including second storey addition, extend basement level (four {4} level), swimming pool, double garage, decks and landscaping approved by DAU on 21 September 2010 with a modification approved by DAU on 22 July 2015.
- **MOD2019/0427** - Modification of Development Consent No.10.2010.164.1, granted for alterations and additions to an existing dwelling including second storey addition extend basement level four 4 level swimming pool double garage decks and landscaping was withdrawn from Council on the 11 December 2019.
- **MOD2019/0542** - Modification of Development Consent No.10.2010.164.1, granted for alterations and additions to an existing dwelling including second storey addition extend basement level four 4 level swimming pool double garage decks and landscaping was approved by Council on the 15 January 2020.

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 DA#####/#####, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	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 DA164/10 for the following reasons: The modifications do not change the building envelope, streetscape appearance, car parking, drainage or landscape outcomes. As there are no change to the previously built form controls, or change in the amenity of the occupants or surrounding sites, the spatial relationship of the proposed works to adjoining properties is maintained with a complimentary and compatible streetscape presentation.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA164/10 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2011 and Manly Development Control Plan.

Section 4.55 (2) - Other Modifications	Comments
(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	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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 residential purposes for an extended period of time. The proposed development retains the 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)	<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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to complete set of architectural plans.

Section 4.15 'Matters for Consideration'	Comments
	<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. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/02/2021 to 12/03/2021 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 of the application Council received no submissions.

REFERRALS

No referrals were sent in relation to this application

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)

Nil

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9m (Dwelling and the Lift Shaft) First Floor RL80,330 Second Floor RL83,150	No change	-	Yes
Floor Space Ratio	FSR: 0.4:1 207.4m ²	DA 2010 FSR: 0.52:1 269.62m ² 30% variation MOD 2015 0.47:1 248.365m ² 19.7% variation	FSR: 0.52:1 (269.4sqm)	29.8% (62sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

Whilst the modification application will result in a Floor Space Ratio that further exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards.

Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted to a development application, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation has been undertaken below:

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor Space Ratio’ of the MLEP 2013 are:

(1) 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*

Comment:

The proposed building on the site area no longer complies with the previously approved FSR control of 0.4:1. The modified FSR is 0.52:1 (269.4sqm), a 29.8% variation. The increase in FSR is a direct result of retaining existing wall locations and reconfiguration of the floor plan within the footprint of the approved dwelling house. It is important to note that the Development Application was approved with a FSR: 0.52:1 (269.62m²) a 30% variation. Whilst this modification FSR is greater than the subsequent modification that reduced the FSR to 0.47:1 (248.365m² with 19.7% variation) the ratio does not exceed what was originally approved.

The proposal maintains the majority of side setbacks as well as appropriate modulation of building bulk through separated building form across the site.

The spatial distance, and elevation will ensure the additional area of building footprint is not visually prominent and is consistent with the approved built form context, the area and the surrounding Manly locality.

As a result, the modifications to the building footprint area are considered consistent with the approved development, and not inconsistent with the prevailing bulk and scale surrounding the site or the desired future character of the locality.

The development satisfies this objective.

- ***(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.***

Comment:

The proposal involves additional floor space at ground and first floor levels and within the existing approved building footprint.

The changes to the footprint do not result in any unreasonable additional bulk on the building. The additional footprint will not have adverse amenity impacts on the adjoining particularly as there is no reduction to any setback distance, and no proposed window openings on the side elevations (other than required by condition).

As a result, the additional FSR is not considered to be overbearing when viewed from adjacent land, and does not create opportunities to overlook adjacent properties.

The additional FSR does not involve an increase in bulk or density that could lead to obscuring landscape or townscape features.

The development satisfies this objective.

- ***(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area***

Comment:

The proposal maintains a similar presentation of building bulk and proposed no amendment to the previously approved area of open space and landscaping. As such, the proposal will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

The development satisfies this objective.

- ***(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain***

Comment:

The proposal involves the addition of floor space at ground and first floor level and does not involve any associated openings (other than required by condition). As a result the proposed areas would not result in any unreasonable impact in terms of the environment or amenity.

The development satisfies this objective.

- ***(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:

Not applicable

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

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

- ***(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development***

Comment:

In this circumstance, providing flexibility to the Floor Space Ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

- ***(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances***

Comment:

It is appropriate to allow flexibility in this circumstance as an addition in Floor Space Ratio can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

Conclusion:

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

Notwithstanding, Council is satisfied that the modified development is substantially the same development as previously approved and whilst no assessment against the objectives of Clause 4.6 is required it has been determined that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under MLEP 2013 and the variation can be supported on its merit.

Manly Development Control Plan

Built Form Controls

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Built Form Controls - Site Area: 518.5m ²	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 950sqm per dwellings	518.5sqm per dwelling	No change	Yes
4.1.2.1 Wall Height	E: 8m	7.7m	No change	Yes
	W: 7.45m	up to 12.5m 8.2m Pool	No change	Yes
4.1.2.2 Number of Storeys	2	3	No change	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6m, inconsistent with prevailing setback	No change	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.66m (based on wall height)	East B/F – 0.5m G/F – 0.5m 1/F – 0m-0.5m 2/F – 1.2m West B/F – 1.5m G/F – 1.5m 1/F – 0.6m 2/F – 1.4m	East B/F - No change G/F - No change 1/F - 0m - 1.3m 2/F - 1.3m to 3.5m West B/F - 1.6m G/F - 1.6m 1/F - 0.6m to 1.5m 2/F - 1.4m to 2.8m	Yes
4.1.4.4 Rear Setbacks	8m	1.5m	No change	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	74% (388.04m ²)	55.5% (288m ²)*	No - Reduction in variation
	Open space above ground 25% of total open space	36.7% (142.54m ²)	29.4%* (122.8sqm)	
4.1.5.2 Landscaped Area	Landscaped area 40% (124.44m ²) of open space	28% (87.1m ²)	No change	Yes
	3 native trees	3 trees	No change	Yes
4.1.5.3 Private Open Space	18m per dwelling	> 18 sqm	No change	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Conditioned RL72,250	No change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No change	Yes

*The Open Space figures approved within Modification 0164/2010/2 (approved on the 22 July 2015) were incorrect. As a result the proposed figures, while significantly less than the approved are reflective of the correct calculation of the proposal.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater 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	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The DCP requirements and objectives, pursuant to Clause 3.1.1 Streetscape (Residential area), including sections 3.1.1.1 to 3.1.1.5, are addressed as follows:

Merit Assessment Comments:

The modified amendments continue to be consistent with Complementary Design and Visual Improvement design outcomes including streetscape considerations for setbacks, materials and built form. As outlined in the built form controls table, there is no significant change in the in the external walls of the dwelling, continuing consistency with the previous approval, and DCP requirements.

The retrospective works continue to have the same visual representation to the street and adjacent land. The removal of the planter boxes and replacement with glass balustrading will not create an unreasonable built form visual representation. The glass balustrading is common place along newer

developments within the area, with the glass balustrading ensuring existing views lines are maintained across the site towards middle harbor, see photo one below.



Photo 1: *Consistency with surrounding dwelling houses.*

The proposed building does however include retaining existing walls, and amending the footprint that will increase the FSR of the proposed dwelling. However, the enclosing of this area will not be discernible than what was previously approved.

In consideration of the Alma Street frontage the building continues to presents as the previously approved three (3) level dwelling house, stepping up the sloping escarpment. The Alma streetscape is characterised by sloping natural topography either side of the road in that dwellings on the higher side generally have much higher rear elevation / setting overlooking the street.

As a result, the modified design continues to be consistent with the original assessment that found the variation to the 2 storey control does not create an unreasonable impact on surrounding land and is consistent with the pattern of surrounding development on the similar high side of the street position.

No issue is raised with respect to clause 3.1.1.5 for the bin storage area as this is concealed from view as part of the garage/storage area.

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

3.3.1 Landscaping Design

The removal of the landscape planter boxes on the ground, first and second floor has no unreasonable impact upon the landscaped setting or landscape design of the proposal. Appropriate landscaping continues to be provided to the front setback area.

It is important to note that the planter boxes where not a required built form, nor conditioned as part of the original consent or previous modifications. As a result, whilst condition **ANS06 and ANS07** can be removed as part of the modification, it is not anticipated that unreasonable visual or amenity impacts arise from their removal.

However, an assessment of the proposal against the relevant objectives of this clause is as follows:

- ***To encourage appropriate tree planting and maintenance of existing vegetation.***

Comment:

The Alma streetscape is characterised by landscaped front setbacks and natural features. The proposed landscape treatment of the front setback area is unchanged by the proposed works and continues to be compatible with the Alma streetscape. The proposal will continue to provide appropriate landscaping as demonstrated by the Landscape site plan- sheet 1 of 3 prepared by Paul Scrivener Landscape Architecture 15/4/2014, with a landscape design that is commensurate to the proposals scale and form.

- ***To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.***

Comment:

The proposed development will continue to retain sufficient areas of soft landscaping to softened and screen the built form. As a result, the proposed development continues to provide provides compensatory landscaping on site to support populations of flora and fauna, particularly within the front setback area.

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

3.4.2 Privacy and Security

Description of non-compliance

The proposed window at the side boundary are non-compliant with Clause 4.1.4.2 which requires new windows to be setback at least 3 metres from side boundaries. Additionally, the window, does not use "use narrow, translucent or obscured glass windows to maximise privacy where necessary," as required by Clause 3.4.2.1 for privacy. However, the proposal new clear window in the south east corner of the first floor is to satisfy condition ANS03.1 and is discussed below.

The proposal includes the removal of the planter boxes and the incorporation of glass balustrading, however the glass balustrading is not considered unreasonable and its design change does not display unreasonable amenity or privacy impacts to the adjoining sites. An assessment has been undertaken to ensure consistency with the objectives of the control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To minimise loss of privacy to adjacent and nearby development 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.***

Comment:

Windows

The provisions of this development control prescribe that when located close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

However, the proposal involves addition of a new clear window in the south east corner of the first floor as per condition ANS03.1. The glazing is clear to ensure satisfaction of the following requirements of the conditions *"The section of the building that contains the access stairs and associated walls located above R.L.77.15 (FFL) to the front of the first floor level to the South Eastern corner of the building is to be modified to comprise clear glazing above R.L.78.5. This should be designed to allow for views through this section of the building for the adjoining side window to the neighbouring property at No.34 Alma Street;"*. As a result the new window, while non-compliant with the required 3m setback, is located over a stairwell reducing privacy impacts, while satisfying the objectives of the condition.

All other windows along the northern, eastern and western side elevations of the dwelling have been previously assessed as appropriately offset to prevent overlooking between adjoining dwellings.

Terraces

The proposal seeks to construct a ground, first and second floor terrace areas. The original privacy screen proposed for the second floor terrace (servicing a bedroom) has been removed from the proposal, however the terrace would be located centrally on the site and would be setback and offset from the private open space of the adjoining dwellings. As a result, this amendment is considered satisfactory.

The proposal has removed the planter boxes proposed on the balconies and replace them with glazed balustrading. This satisfies the requirements of condition ANS03 whereby, "clear glazed balustrade is to be included to the front terrace area at R.L.77.15 (first floor level);". The planter boxes proposed to the second floor have also been replaced with glass balustrade. As these terraces are orientated to the front setback, i.e towards Alma Street no unreasonable privacy impact is expected.

Swimming Pool

The design reflects the requirements of condition ANS03 *"The pool level is to be reduced from R.L.73.1 down to R.L.72.25 with the proposed external stairs leading to the dwelling to the western side of the building deleted from the scheme. 5. A set of stairs leading to the entry level is to be configured leading to the entry level starting from ground level below the front edge of the elevated pool leading from beneath the pool upwards to access the deck area."*

The amendments to reflect the condition, combined with the privacy wall that runs along the eastern side setback, allow appropriate privacy level to be maintained between adjoining properties.

As a result, the modified design continues to be consistent with the original assessment that found the variation to the controls does not create an unreasonable amenity impact on surrounding land and is consistent with the pattern of surrounding development on similar sloping positions

- ***To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.***

Comment:

The proposal involves addition of a new clear window in the south east corner of the first floor as per condition ANS03.1.

The modification removes the privacy screen previously proposed along the eastern edge of the first floor. However, the terrace is servicing a bedrooms, and due to the location and the orientation over the roofline, there is no direct overlooking to the eastern neighbouring private open spaces areas, and the removal is reasonable in this instance.

As a result, the proposed amendments includes openings and balustrading to allow for greater access to light and air without resulting in unreasonable privacy outcomes, and while retaining suitable outlooks and views.

- ***To encourage awareness of neighbourhood security.***

Comment:

The proposal provides entrances areas at the front of the property {as per previous condition) that provide reasonable opportunity for awareness of neighbourhood security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

Floor space requirements requirements and objectives, pursuant to Clause 4.1.3 Floor Space Ratio, are addressed as follows for the modification:

Merit Assessment Comments:

The proposed development is considered consistent with the following objectives of this clause:

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

Comment:

The proposed building on the existing site area no longer complies with the FSR control of 0.4:1. The increased FSR is now 0.52:1 (269.4sqm) demonstrating a 29.8% variation. The increase in FSR is a direct result of the retention of existing wall planes, and reconfiguration of the footprint within the approved dwelling house. In this regard, it is noted that the Manly LEP calculates FSR based on the whole of the site area. Overall, the scale of development as modified is substantially the same and does not unreasonably obscure important landscape features.

In consideration of the Alma Street frontage the building continues to presents as the previously approved three (3) level dwelling house, stepping up the sloping escarpment. The Alma Street streetscape is characterised by sloping natural topography either side of the road in that dwellings on the higher side generally have much higher rear elevation / setting overlooking the street.

As a result, the modified design continues to be consistent with the original assessment that

found the variation to the 2 storey control does not create an unreasonable impact on surrounding land and is consistent with the pattern of surrounding development on similar sloping positions.

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

Comment:

The non-compliance with the FSR for the modification proposed does not create an unreasonable disruption to views for adjacent and nearby development as the design of the additional floor space being located within the previously approved footprint of the dwelling houses and maintains the existing setbacks that impact any established view lines.

The modification maintains consistency with the surrounding bulk and scale of dwellings in the vicinity (visual catchment) of the site and maintains the approved landscape open space. Therefore, the modification maintains consistency with this control.

- ***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 modification to the FSR does not create any unreasonable impact on 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.

In summary, the proposal is considered to maintain consistency with the FSR objectives pursuant to this clause.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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 proposal is supported, in this particular circumstance.

Note: The objective of Manly LEP objectives at clause 4.4(1) have been also considered in context of the DCP requirements.

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

The modification results in the increase to the setbacks of the eastern elevation of the first floor. Amendments made to the western side boundaries, particularly the first floor, are not less than what has been previously approved. Whilst the rear setback is compliant as per the original development application approval.

Never the less, setback requirements and objectives, pursuant to Clause 4.1.4 Setbacks (front, side and rear) and Building Separation, are addressed as follows:

Merit Assessment Comments:

- ***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 modified proposal has maintained the existing streetscape, including the desired spatial residential proportions of the street, the street edge and the landscape character of Alma Street. The submitted plans also satisfy the conditions previously applied to ensure a 8.5m front setback to the elevated pool area measured from the Alma Street frontage.

- ***To ensure and enhance local amenity by:
providing privacy;
providing equitable access to 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.
defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and
facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.***

Comment:

The modified proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) and providing equitable access to natural light, direct sunlight and air circulation for the proposed dwellings and the surrounding environment. In this regard, greater eastern setbacks of the ground floor (nil - 1.3m) demonstrate recessed elements and breaks in the side walls, and maintains consistency with the approved bulk and scale.

- ***To promote flexibility in the siting of buildings.***

Comment:

Adequate side setbacks have been maintained with the modification including the removal of stairs (as per condition) and natural features of landscaping including deep soil zones and appropriate planting subject to conditions already applied under the original consent. The setbacks will maintain requirements for Building Code of Australia considerations of access, drainage work and emergency requirements (fire safety). The modification does not detract from the context of the site and particularly in relation to street frontages and front and side setbacks including the context of neighbouring properties and the prevailing building lines in the immediate vicinity.

The modification of the proposal does not alter the garage carparking area and minor changes are proposed to the subfloor storage only.

- ***To enhance and maintain natural features by:
accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;
ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks;
and
ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.***

Comment:

The modification maintains consistency with the pattern of significant areas of landscaped open space despite the minor change and includes smaller elements of landscaping along the eastern side setbacks to provide visual interest and amenity.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed modification of the development is consistent with the 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 proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

With an area of 288m² or 55.5% of total open space, the proposed area of above ground open space is inconsistent with the 25% maximum prescribed by this control at 29.4%(122.8sqm). However, whilst there is a reduction in the above ground open space, the area of open space is maintained (when compared with the previous approved plans). As a result, the minor non-compliance is reduced and is also considered to be justifiable in this instance, noting the slope of the site and the orientation of the dwelling with respect to both solar access and available views. Further, the minor variation of above ground open space does not detract from consistency with the objectives of the control, as follows:

- ***To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.***

Comment:

The proposed development will continue to provide the previously approved landscaping arrangement that ensures the landscape character of the site is maintained.

- ***To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.***

Comment:

The proposed development provides a reasonable landscaped area that does not change with this application. The reduction in the of the proportion of above ground open space variation does not alter this outcome.

- ***To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.***

Comment:

The proposed areas of above ground open space do not result in any unreasonable impacts upon the amenity of adjoining properties or the streetscape.

- ***To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.***

Comment:

The proposed development, as previously approved, maximises water infiltration and water runoff is minimised.

- ***To minimise the spread of weeds and the degradation of private and public open space.***

Comment:

The area of above ground open space will not impact upon the spread of weeds or the degradation of private or public space.

- ***To maximise wildlife habitat and the potential for wildlife corridors.***

Comment:

The proposed excess of above ground open space does not impact upon wildlife habitat or the potential for wildlife corridors.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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 proposal is supported, in this particular circumstance.

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 2019

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0023 for Modification of Development Consent N164/10 granted for Alterations and additions to an existing dwelling including second storey addition extend basement level swimming pool double garage decks and landscaping on land at Lot 30 DP 2610,38 Alma Street, CLONTARF, subject to the conditions printed below:

A. Add Condition No.1A - 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
Site Plan A01	14/4/2021	Fab Siqueira Architect
GA Plan - Entry, garage, and basement plan A150	14/4/2021	Fab Siqueira Architect
GA Plan - Ground Floor Proposed A151	14/4/2021	Fab Siqueira Architect
GA Plan - First Floor Proposed A152	14/4/2021	Fab Siqueira Architect
GA Plan - Second Floor Proposed A153	14/4/2021	Fab Siqueira Architect
GA Plan - North and South Elevation A155	14/4/2021	Fab Siqueira Architect
GA Plan - West Elevation A156	14/4/2021	Fab Siqueira Architect
GA Plan - East Elevation A157	14/4/2021	Fab Siqueira Architect
GA Plan - Long Section A164	14/4/2021	Fab Siqueira Architect

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

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

B. Delete Condition ANSO1 to read as follows:

Delete

C. Delete Condition ANSO2 To read as follows:

Delete

D. Add Condition ANSO3 to read as follows:

Delete

E. Add Condition ANSO6 to read as follows:

Delete

F. Add Condition ANSO7 to read as follows:

Delete

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

Signed



Catriona Shirley, Planner

The application is determined on 05/05/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments