

Memo

Department

To: Development Determination Panel
Cc: Rodney Piggott
From: Luke Zajac (Consultant Planner - Mecone)
Date: 4 November 2022
Subject: Supplementary Assessment Report
Record Number: DA2022/0033

Dear Development Determination Panel,

SUPPLEMENTARY ASSESSMENT REPORT

EXECUTIVE SUMMARY

DA2022/0033 was considered by Council's Development Determination Panel (DDP) on 12 October 2022. The Panel deferred determination of the DA for the following reasons:

1. *Providing the applicant an opportunity to provide information in support of their application with regard to the considerations prompted by Clause 6.10 of the Manly LEP 2013. This supporting information may include a legal opinion as to the power available to the Consent Authority under Clause 6.10 when considering a new building. The applicant is provided 14 days from the date of publish of these minutes to submit information in support of Clause 6.10; and*

The applicant provided additional information in relation to Clause 6.10 of Manly Local Environmental Plan 2013.

2. *Defer the application for further assessment and preparation of a supplementary assessment report pending the applicant's response to (a) above; and*

Further assessment is undertaken in the Supplementary Assessment Report below.

3. *The supplementary assessment report is to re-evaluate the application against the relevant considerations of Section 4.15 of the Environmental Planning and Assessment Act 1979 and ensure that the re-assessment is accurate and complete; and*

The Supplementary Assessment Report has re-evaluated the application against the relevant considerations of Section 4.15 of the Environmental Planning and Assessment Act 1979 as detailed below.

4. *At such time that the supplementary assessment report is complete, it be publicly exhibited for a period of 7 days and then brought back before the DDP for a further public meeting where it may be publicly addressed on any new matter or issue arising from the supplementary assessment report, not already covered in the original assessment report.*

The Supplementary Assessment Report is published in the Development Determination Panel Agenda on Council's website 7 days prior to the Development Determination Panel Meeting and all objectors are notified of the Development Determination Panel Agenda.

MANLY LOCAL ENVIRONMENTAL PLAN 2013

6.10 Limited development in the foreshore area

Description of non-compliance:

Clause 6.10(2) of the MLEP 2013 limits development within the foreshore area. The development proposes a range of works forward of the foreshore building line including:

- Construction of a three storey dwelling partly within the foreshore area,
- New retaining wall and resurfacing of existing retaining walls
- Resurfacing of existing waterway access stairs,
- Stormwater infrastructure, and
- Upgraded swimming pool fencing and gates.

Notwithstanding, Clause 6.10(2)(b) of the MLEP 2013 expresses that:

- 2) *Development consent must not be granted to development on land in the foreshore area except for the following purposes—*
 - (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
 - (b) *the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,***
 - (c) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The proposed development qualifies for the expressed variation under clause 6.10(2)(b) as the site features significant level change (7m) forward of the foreshore building line. The portion of the site up-slope of the level change contains the existing dwelling and will be where the proposed dwelling is to be located. The level change is negotiated by retaining walls and natural rock features and includes a path and staircase to provide access between the upper and lower portions of the site. The lower portion, which immediately fronts the foreshore (Little Manly Cove), contains a pool, access stairs and tiled area around the pool.

For the purposes of the clause, this level change is considered an exceptional site feature that would make development within the foreshore area appropriate to do so.

The upper portion of the site is physically and visually separated from the foreshore area, particularly its functions and aesthetic qualities.

Clause 6.10 Limited development in the foreshore area

An assessment of the development against the standards of Clause 6.10(3) are provided below.

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that—

(a) the development will contribute to achieving the objectives for the zone in which the land is located, and

Comment:

An assessment of the development against the C4 Environmental Living zone objectives has been undertaken below and found to be acceptable.

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

Comment:

The siting of the dwelling forward of the foreshore building line is consistent with the development patterns of lots on the eastern side of Addison Road, which provide rear building lines parallel to the rear boundary of the lot, despite the 45 degree foreshore building line that bisects the sites. These sites are developed for a range of purposes including 2-3 storey dwelling houses and 3-4 storey residential flat buildings.

The visual impact of the dwelling is mitigated by its setback from the mean high-water mark, and natural rock outcrop forward of the building line that accommodates the change in levels of the site. The proposed 2-3 storey dwelling house is consistent with existing development patterns within the foreshore area along Addison Road. The works are therefore not expected to cause adverse visual impacts to the foreshore or immediate locality.

The refurbishment works to the existing retaining walls and access stairs will improve the visual presentation of the site through the use of natural materials immediately visible from the foreshore.

The existing walls and stairs are not considered commensurate with the aesthetic values of the foreshore area, with their refurbishment considered an appropriate response to the existing development, levels and topography of the site.

The proposed stormwater works are required to be downslope of the dwelling per Council's engineering requirements and are not objected to in this instance.

(c) the development will not cause environmental harm such as—

(i) pollution or siltation of the waterway, or

(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or

(iii) an adverse effect on drainage patterns, and

Comment:

The application, including proposed stormwater treatment, has been assessed by Council's Riparian Lands and Creeks officer, Coast and Catchments Officer and Development Engineering Officer, who all found the proposal acceptable, subject to conditions.

(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

Comment:

The development does not change existing waterway access arrangements or on-site population. No congestion or conflict between people using open space areas or the waterway are expected.

(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

Comment:

The ability to provide continuous public access along the foreshore has been compromised by existing development in the locality. Notwithstanding, no major changes to the existing development immediate to the foreshore (pool and landscaped area) are proposed.

(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

Comment:

The application was referred to the Aboriginal Heritage Office who did not raise objection to development of the site. The development was also referred to Council's heritage officer, who also did not raise objections to the proposal. As discussed throughout the report, the proposed development is consistent with existing development patterns in the foreshore area of the locality, and the landscaping works will likely improve its presentation to the foreshore and surrounding locality.

The proposal therefore is not expected to affect any historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land.

(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

The development is not defined as alteration or rebuilding of the existing dwelling, as the existing dwelling is to be completely demolished and a new dwelling constructed.

Notwithstanding, as discussed throughout the report, the proposed development is consistent with existing development patterns in the locality, and the landscaping works will likely improve its presentation to the foreshore and surrounding locality.

Comment:

(h) sea level rise or change of flooding patterns as a result of climate change has been considered.

Comment:

The application, including proposed stormwater treatment, has been assessed by Council's Riparian Lands and Creeks officer, Coast and Catchments Officer and Development Engineering Officer, who all found the proposal acceptable, subject to conditions.

An assessment of the development against the standards of Clause 6.10(4) are provided below.

(4) In satisfying itself about a matter mentioned in subclause (3) (e), the consent authority must give consideration to the following—

(a) continuous public access to and along the foreshore through or adjacent to the proposed development,

Comment:

As discussed above, the ability to provide continuous public access along the foreshore has been compromised by existing development in the locality. Notwithstanding, no major changes to the existing development immediate to the foreshore (pool and landscaped area) are proposed.

(b) public access to link with existing or proposed open space,

Comment:

No existing or proposed open space is located immediately adjacent to the site.

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,

Comment:

N/A. No public access arrangements are considered necessary in this instance.

(d) public access to be located above mean high water mark,

Comment:

N/A. No public access arrangements are required or proposed in this instance.

(e) reinforcing the foreshore character and respect for existing environmental conditions.

Comment:

As detailed throughout this assessment report, the proposed works will likely improve the site's visual presentation to the foreshore and surrounding locality.

The siting of the proposed works forward foreshore area is considered appropriate in this instance given the existing site features, topography and development forward of the foreshore line.

MANLY DEVELOPMENT CONTROL PLAN 2013

Built Form Controls

Built Form Controls - Site Area: 699m²	Requirement	Proposed	% Variation*	Comply
4.1.2.1 Wall Height	N: 6.8 metres (based on gradient 1:20)	6.5m	N/A	Yes
	S: 6.5 metres (based on gradient 0)	5.8m	N/A	Yes
	E: 7.6 metres (based on gradient 1:5.5)	7.0m	N/A	Yes
	W: 7.2 metres (based on gradient 1:9)	6.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.8m	N/A	Yes
	Pitch: maximum 35 degrees	8 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.2m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1.9m to 3m (based on wall height of 5.9m to 8.5m)	LGF: 2.8m GF: 1.4m, 2.4m & 3.3m FF: 2m, 2.6m & 3.3m	20% - 26% 13.3%	No No No
	W: 1.6m – 2.4m (based on wall height of 5m to 7.2m)	LGF: 3.7m GF: 1.2m, 2.1m FF: 2.1m	N/A 14% - 25% 14%	Yes No No
	Windows: 3m	1.2m	60%	No
4.1.4.4 Rear Setbacks	8m	8.2m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (384.45m ²)	52.48% (358.39 m ²)	6.77% 26.06m ²	No
	Open space above ground 25% of total open space (89.5m ²)	18.44% (66.1m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (125m ²)	44.6% (167.5 m ²)	N/A	Yes
	2 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	>18m ²	N/A	Yes

Detailed Assessment

4.1.2.2 Number of Storeys

Description of non-compliance

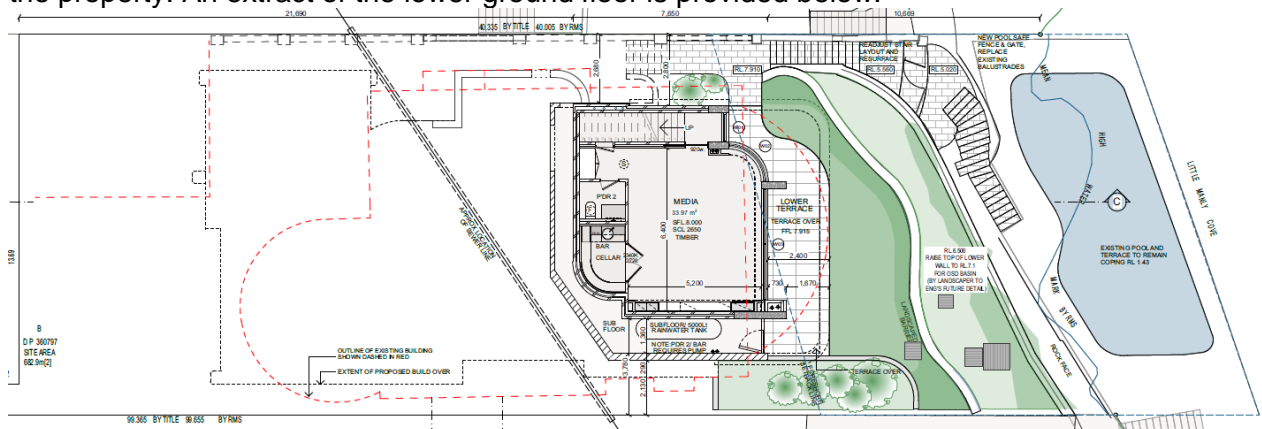
Clause 4.1.2.2 of the MDCP requires that buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan. The site is not located in areas 'L' or 'N1' of the LEP.

The control expressly permits variations for the number of storeys in the following instances:

- c) *Variation to the maximum number of storeys may be considered:*
- i) *where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*

The proposal is located on a sloping site that features an existing cut, which is considered sufficient grounds to warrant an exemption to the requirement. The proposal however does not comply with all other numeric height controls or development standards; however, this is considered acceptable in this instance.

The proposal provides a part 2, part 3 storey dwelling. The third-storey element occurs as the first floor extends over a partial basement/lower ground floor towards the rear of the property. An extract of the lower ground floor is provided below.



Extract of lower ground floor plan

Detailed Assessment:

It is noted that no objectives are provided for the clause, but rather reference to the objectives of Clause 4.3 Height of Building of the Manly DCP is made. An assessment against these objectives is provided below:

- 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,*

Response:

The third storey element is a result of the slope of the site and existing cut present. The existing cut to the eastern portion of the site is suited for a lower ground/partial basement level and represents an appropriate design outcome that responds to the topography of

the site. Whilst the third storey element results in a breaching height limit, the breach is limited to non-habitable building elements including the pitched roof structure, an awning over a balcony and rooftop terrace and associated balustrades. As demonstrated by the applicant in their Clause 4.6 request, the breach does not result in any adverse impacts and is a result of the sloping nature of the site.

The immediate locality dominated by a range of large 2-3 storey dwelling houses and 3-4 storey residential flat buildings. The proposal provides for a mostly 2 storey dwelling with a flat roof, with a significantly lower building height than adjoining development to the east and west along the Little Manly Cove foreshore.

Stepping of the built form to strictly provide a two storey dwelling on the sloping site with existing cut, in context of the built form in the locality, is considered unreasonable and unnecessary in this instance. The proposed dwelling, despite the non-compliance, responds to the topography of the site, is below the prevailing building height of adjoining development and is consistent with the desired future character of the locality.

(b) to control the bulk and scale of buildings,

Response:

As discussed throughout this report, the proposed dwelling represents an appropriate bulk and scale in consideration of the locality.

(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),

Response:

As demonstrated throughout this report, the development is not expected to adversely affect view corridors from adjoining residential development or public spaces.

(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,

Response:

As demonstrated in this report, the proposal will not have any adverse overshadowing impacts on adjoining dwellings.

(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.

Response:

The proposal directly responds to the existing slope and cut on the brownfield site and provides a development consistent with the built and natural environment of Addison Road. Unlike most C4 zoned localities, Addison Road features extensive development down to the waterfront with minimal vegetation or bushland qualities. In complying with the landscaped area requirement of the MDCP, the development will contribute a level of landscaping appropriate for the locality.

The proposed height and bulk of the dwelling house is compatible with the surrounding locality and is not expected to conflict with any environmental purposes, given the highly developed nature of the locality.

4.1.4.2 Side setbacks

Description of non-compliance

The proposal provides a range of staggered setbacks to the eastern and western side elevations respectively:

Eastern:

- LG: 2.8m
- GF: 1.4m, 2.4m & 3.3m
- FF: 2m, 2.6m & 3.3m

Western:

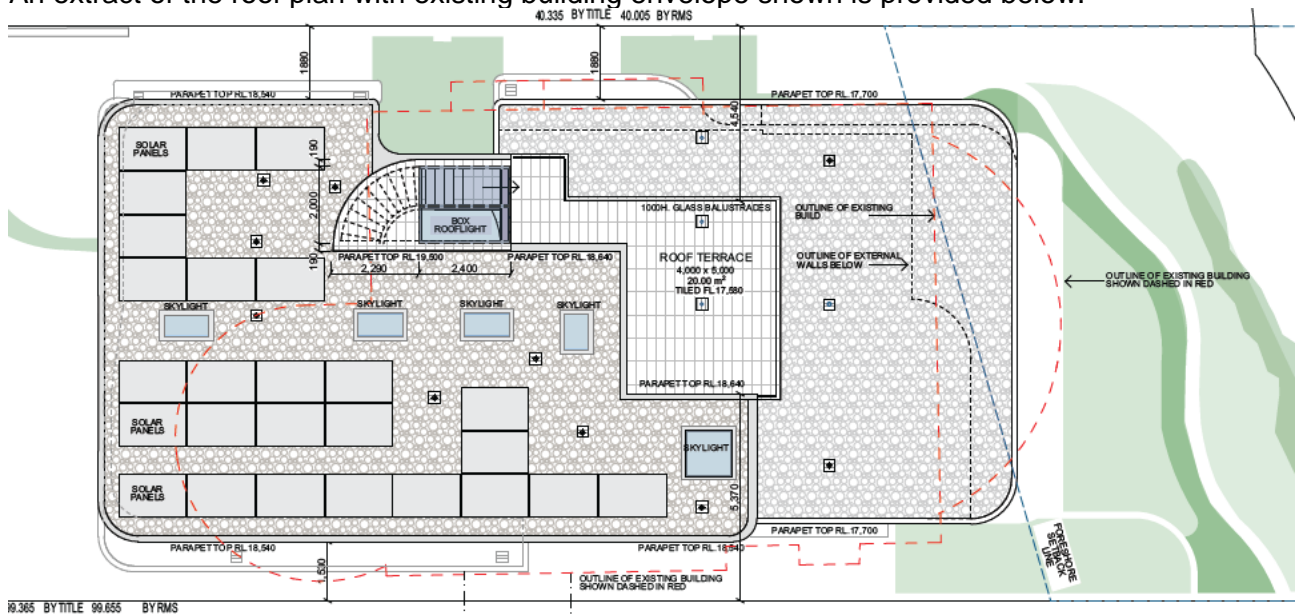
- LG: 3.7m
- GF: 1.4m, 2.4m & 3.3m
- FF: 2m, 2.6m & 3.3m

Due to the slope of the site, a range of wall heights are proposed along each elevation. The following side setback range therefore applies to the respective setbacks:

- Eastern: 1.9m to 3m (based on wall height of 5.9m to 8.5m).
- Western: 1.6m – 2.4m (based on wall height of 5m to 7.2m metres).

It should be noted that the proposal will increase the side setbacks compared to the existing development on the site, including an increase from 0.6m to 1.2m on the western boundary, and 2m to 2.8m on the eastern boundary.

An extract of the roof plan with existing building envelope shown is provided below:



Extract of roof plan with existing building envelope overlain.

Detailed Assessment

Notwithstanding the non-compliance, the proposed setbacks are found to be reasonable, having regard to the objectives of the clause. An assessment is provided as follows:

1. *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.*

Response: The streetscape is not affected as the development is on a battle axe block and only the driveway has a street frontage.

2. *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.*

See also objectives at paragraph 3.4 Amenity.

Response: The proposed side setbacks are found to be an improvement from the existing development in the above objectives of privacy, view sharing, adequate space between buildings, equitable access to light, sunshine and air movement as the setback has been increased.

The staggered side setbacks to the western elevation provide for an articulated built form that provides usable private open space in the side setback. The elements setback beyond the specified wall height calculation offset the breaching elements, providing relief and visual interest to the adjoining site.

The building envelope resolves the minimal setback issues present between the site to the east, almost doubling the setback on the first floor.

The proposed setback variations are therefore considered acceptable in this instance.

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

Response: The site is subject to a number of side setback requirements due to the steep slope of the land, which increases wall heights as the building navigates the slope. The dwelling house as proposed provides a balanced response to the tricky site topography and side setback requirements, as well as providing a functional dwelling for future residents.

Further, the eastern elevation provides a number of stepped elements beyond the required side setbacks, somewhat offsetting the breaching elements.

The proposal represents an improved presentation to the adjoining western development, and as discussed throughout this report, is considered acceptable in this instance.

4. *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.*

Response: The side setbacks allow for planting along the side setbacks. The landscape plans detail the location of the planting areas.

5. *To assist in appropriate bush fire asset protection zones.*

Response: The site is not in a bushfire zone.

Recommendation:

The applicant has adequately addressed the DDP resolution, and accordingly the original recommendation for approval and associated proposed conditions of consent is maintained.