

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 21 FEBRUARY 2024

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 21 February 2024

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 14 FEBRUARY 2024

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 14 February 2024 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1 DA2023/0368 - 1/9-15 CENTRAL AVENUE, MANLY - FIT OUT AND USE OF THE COURTYARD FOR THE SEATING OF 100 PATRONS, OPERATING FROM 8.00AM TO 10.00PM.

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

The application was deferred from the Northern Beaches Local Planning Panel meeting held on 13 December 2023.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0368 for the fitout and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm on land at Lot CP SP 61679, 9 - 15 Central Avenue MANLY, NSW 2095 and Lot 1 SP 61679, 1 / 9 - 15 Central Avenue MANLY subject to the conditions set out in the Supplementary Memo.

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2024/077376
ATTACHMENTS	1 ↓ Supplementary Memo 2 ↓ Seating Layout

MEMORANDUM

DATE: 14 February 2024

TO: Northern Beaches Local Planning Panel

CC: Peter Robinson, Executive Manager

FROM: Nic England, Planner

SUBJECT: Item 4.1, DA2023/0368 – 1&CP 9-15 Central Avenue, Manly, Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing).

REFERENCE: Applicants response to the NBLPP deferral of application 13 December 2024

TRIM: 2024/067044

The purpose of this memo is to provide a review of the Applicant's response to the Panels request for further information.

OVERVIEW

The application was referred to the NBLPP on 13 December 2023, where staff had recommended refusal of the application. In summary, the recommendation for refusal was a result of:

- inconsistent / incomplete plans as to the extent of proposed works and its implicit relationship with the existing premises; and the
- inadequacy of the clarity of supporting documentation (ie. the acoustic report) be consistent with the proposed works and in turn determine the potential level of impact.

The applicant sought a deferral to enable it to address matters raised in Council's assessment report.

The Panel subsequently deferred determination of the as follows to give the applicant an opportunity to submit additional information.

The Panel considers that they would be in a position to determine whether to approve the proposed works and 100 seats in the courtyard if the applicant provides a supplementary acoustic report addressing the acoustic issues raised in Council's assessment report and provides a further report from a qualified BCA consultant providing details of the ability of the proposal to satisfy the access (including but not limited to toilets) requirements of the BCA and the Disability (Access to Premises) Standards 2010, and if necessary additional or amended plans are to be submitted. The applicant is to lodge any further reports, amended plans and further information with Council by 24 January 2024.

The applicant provided information in response to the Panel's deferral received via the NSW Planning Portal on 29 January 2024. The following documentation was provided:

- Plan of "Proposed Insitu Capacity" showing total number of internal and external seating;
- Plan of sanitary facilities;

- Assessment of compliance with the Building Code of Australia / National Construction Code 2022, Volume 1 in relation to the provision of adequate Sanitary Facilities, *undertaken by Private Certifiers Australia*, dated 23 January 2024; and
- Acoustic Impact Assessment (memo), prepared by *WSP Australia Pty Ltd* (WSP), dated 24 March 2023*

*Whilst the submission from WSP references a date that predates the Panel meeting of 13 December 2023, Page 1 states that: "This revision of the report has been updated to also address the comments made to the by Northern Beaches Council in the Development Application Assessment Report DA2023/0368 in Section 2." It is accepted that this report is a revision in response to the assessment report of the Panel meeting of 13 December 2023.

The additional information was uploaded to the Planning Portal and Council's website on 29 January 2024 and therefore was available to the public, however no formal re-exhibition was requested or considered necessary. No further resident submissions have been received since the receipt of the additional information.

The amended plans illustrate the following, which was not present in the previous plans / information:

- 100 patrons inside the restaurant;
- 100 patrons in the associated courtyard; and
- A proposed re-configuration of the sanitary facilities, to accommodate the proposed number of patrons.

A total of 200 patrons are indicated within both Lot 1 and Lot CP of SP 61679. A further 48 patrons are shown on the road reserve of Sydney Road, these are subject to a separate lease under the Roads Act and would not form part of this approval. The applicant has a current lease from Council for an area 16 x 2.5 metres within the road reserve of Sydney Road (pedestrian mall). Adequate sanitary facilities are provided which can cater for up to 400 patrons.

In the amended information, the revised acoustic report prepared by WSP outlines a series of recommendations in Part 5 of the report, which includes options for the installation of roofing over the proposed pergolas in the courtyard, which would be of either a solid or "operable" construction. These are summarised as follows:

Option 1: Operable Roof

This roof would extend over the entire area of Lot CP SP 61679, separated in two equal sections. The roof would be comprised of aluminium louvres with interconnecting blades, with each louvre module filled with 50mm thick acoustic infill and weather seals between each louvre. A concept plan is provided below:



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Figure 5.1 Extent of operable roof sections above courtyard (Option 1)

The report recommends that the operation of the roof be subject to the number of patrons on the premises, as follows:

- Up to 40 patrons: Entire operable roof open;
- 41 to 80 patrons: Minimum left half roof section closed; and
- 81 to 100 patrons: Entire operable roof (left + right section) closed.

Option 2: Awning Extension

This option involves the construction of solid awning/roof on the western and southern sides of the courtyard, approximately 2.5m in width. A concept plan is provided below:



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Figure 5.2 Extent of awning extension above courtyard (Option 2)

The merits of these options are discussed further in this memo.

Building Compliance

Advice was sought from Council's Building Compliance officers on the amended plans / additional information in regard to the proposed re-configuration of the sanitary facilities.

Building Compliance has confirmed that the advice from *Private Certifiers Australia* (dated 23 January 2024) is correct. In accordance with the relevant NCC BCA 2022 standards, the facilities will accommodate 400 people.

In this regard, there is sufficient evidence to determine that the proposed development will service the proposed development and in turn meet the relevant requirements of the Building Code of Australia / National Construction Code.



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Environmental Health

The additional information was referred to Council's Environmental Health Officer and the following response was received:

The proposal seeks Council approval to refurbish the existing communal outdoor dining space to improve the amenity and functionality of the space.

The use of the communal commercial courtyard is to remain unchanged, with the capacity restricted to 100 patrons and operation limited to between 8.00 am and 10.00 pm only.

An acoustic report prepared by WSP Australia Pty Ltd dated 24 March 2023 has addressed a number of noise concerns raised by Council. The report has stated:

The proposed project is predicted to comply with the relevant noise requirements for the proposed hours of operation with the recommendations presented in Section 5

The acoustic report has addressed Council's concerns in relation to potential noise from the outdoor serving area, inside patrons accessing and congregating in the courtyard, addition of serving staff in courtyard and noise after 10:00pm due to clean up of the outdoor area.

Two noise attenuation methods have been suggested for the courtyard (operable roof and awning extension). The use of the operable roof relies on staff to count the number of patrons in the outdoor courtyard in order to determine how much of the roof is to be utilised to reduce noise.

The existing awning however is fixed and its extension inoperable once in place. This is Council's preferred option.

Environmental recommends approval subject to conditions."

Planner Comment:

The commentary from Environmental Health, and the recommended conditions of consent, are generally agreed with.

Page 12 of the acoustic report states in respect to "Option 1" that the operable roof is to be operated within the following parameters:

"The operable roof must be closed as follows depending on the number of patrons in the outdoor courtyard. Please refer to Figure 5.1 for a mark-up of the left and right roof section extent.

- Up to 40 patrons: Entire operable roof (left + right section) can be open*
- 41 to 80 patrons: Minimum left half roof section closed*
- 81 to 100 patrons: Entire operable roof (left + right section) closed"*



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The Environmental Health Officer comments state a preference for Option 2, where a permanently solid roof awning is to be provided. This recommendation is a desirable outcome and forms part of the recommended conditions of approval.

Option 1, where an operable roof is proposed, is not supported. The concern with relying on patronage numbers to enact sound mitigation is both: difficult to enforce; and an unreliable way to limit sound impact, as it relies on a behavioural, rather than a more reliable design method, to ensure the impact is acceptable.

It is the opinion of this assessment that Option 1 would only be only acceptable if a time limit option could replace the patronage method suggested by the applicant. This could involve closing the roof at 8.00pm, which is considered a reasonable time to properly mitigate the impact on adjoining residences.

Hence, a condition to enforce the preferred Option 2 of the acoustic report is recommended.

It is noted that the architectural plans provided in the application do not reflect the roof options presented in the acoustic report. However, the conceptual recommendations in this report are not dissimilar to any degree that be both: inconsistent with what is proposed; and / or result in any additional impact on adjoining properties. To this end, recommended condition of consent will require that the addition of the roof will result in no structure higher than that proposed in the architectural plans (ie.4.2m above existing ground level).

Previous Reasons of Refusal:

A consideration of how the amended / additional information has addressed the previous reasons for refusal is provided below:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E1 Local Centre of the Manly Local Environmental Plan 2013.

Particulars: There is insufficient information to determine that the proposal will serve to minimise conflict between the residential and non-residential land use and ensure no adverse amenity impact on adjoining residents with respect to generation of noise.

Comment: The amended / additional information has served to present a true representation of both the proposed works and the existing premises and they relate to each other. Revised acoustic reporting has considered the entire impact of the premises in conjunction with the proposed works. The outcome of this assessment is that the proposal can demonstrate that no unreasonable impact to adjoining premises is likely to occur. Conditions of consent to further mitigate this impact are also recommended. Hence, the proposal as amended is considered to demonstrate consistency with the E1 Local Centre zone objectives and this is no longer a recommended reason for refusal of the application.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.21 Noise Impacts - Licensed Premises of the Manly Local Environmental Plan 2013.



***Particulars:** The application has failed to provide sufficient information to determine if the proposed works / seats will not have an adverse impact on the amenity of residential accommodation in the vicinity of the proposed development.*

***Comment:** As stated above, adequate information has been provided to demonstrate that no adverse or unreasonable acoustic impact will occur in the context of the surrounding area. Hence, Clause 6.21 Noise Impacts - Licensed Premises of the Manly Local Environmental Plan 2013 is considered to be adequately satisfied. This is considered no longer a recommended reason for the refusal of the application.*

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013.

***Particulars:** The application has failed to provide sufficient information that incorporates the full operational scope of the existing restaurant, in conjunction with the proposed works, in order to demonstrate that the proposal will give adequate protection of acoustical privacy to adjoining residents.*

***Comment:** Adequate plans have been provided to resolve this issue and this is no longer a recommended reason for the refusal of the application.*

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

***Particulars:** The applicant has not provided adequate and consistent information to identify the exact impact of the proposal and in turn properly manage conflicts between different land uses in the zone in which the proposal is located.*

***Comment:** Through the applicant providing additional / amended information, an accurate representation of the proposed development has been provided. This in turn allows a thorough and proper assessment of the application to be made. It is considered that there are no longer any likely adverse impacts as a result of the proposal and the amended application and that it is considered to be not adverse to the public interest.*

Analysis of Amended / Additional Information

Note the description of the proposed development (as offered by the applicant) being:

"Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing)":

is still consistent with the amended application as recommended to be approved. Whilst the amended plans demonstrates that the maximum number of patrons on the premises will be a maximum of 200, this number is considered to reflect the existing approved situation.

As outlined in the previous assessment report, the maximum number of existing patrons on the premises, was not definitive due to insufficiencies in Council's records. Despite the existence of an existing condition of



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consent which limited the maximum number of patrons to 100, the operational and physical reality of the premises was that patron numbers in the premises could be (existing and proposed) significantly higher than 100.

The maximum patronage specified under the existing consent (100) was applied for the reason of mitigating impact on adjoining residences. However, no specific rationale is evident in the Council reporting as to how, or why, this number was selected as an acceptable benchmark. Hence, a critical review of this condition is entirely reasonable within the assessment of this application, as the parameters of the current proposal will in effect supersede the current operational conditions of the premises.

The previous assessment report detailed both the existing and likely increase in patronage numbers on the premises. With the additional information provided, the following key patronage numbers are estimated, based on the previous assessment:

- an additional 68 patrons in the courtyard; and
- up to 100 additional patrons on the entire premises, based on the existing condition of consent under Consent No.684/99.

Whilst in effect this will result in a doubling of the existing approved patronage, the number of patrons proposed is considered acceptable, based on:

- The outcome of the acoustic report which demonstrates consistency with both Clause 6.21 Noise Impacts
- Licensed Premises of MLEP 2013 and Clause 3.4.2 Privacy and Security of MDCP 2013;
- The favourable comments received from Council's Environmental Health Officer; and
- The recommended conditions of consent to ensure consistent and appropriate parameters of operation. These conditions are considered be consistent with the "Newbury" test and are required to ensure no adverse impact on adjoining residences.

SUMMARY AND RECOMMENDATION

The additional information generally addresses the omissions and inconsistencies with the information that was provided to the Panel at its meeting of 13 December 2023. In this regard, the recommendation is that the application be approved.

Recommendation

That the Northern Beaches Local Planning Panel, on behalf of the Northern Beaches Council as the consent authority grant Development Consent to DA2023/0368 for the fitout and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm on land at Lot CP SP 61679, 9 - 15 Central Avenue MANLY, NSW 2095 and Lot 1 SP 61679, 1 / 9 - 15 Central Avenue MANLY NSW 2095 subject to the conditions printed below:



CONDITIONS OF APPROVAL

Application Number:	DA2023/0368
Land to be developed (Address):	Lot CP SP 61679, 9 - 15 Central Avenue MANLY NSW 2095 Lot 1 SP 61679, 1 / 9 - 15 Central Avenue MANLY NSW 2095
Proposed Development:	Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing)

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A02	p3	Demolition Plan	SARM Architects	Aug 2021
A03	p6	Proposed Plan	SARM Architects	Aug 2021
A05	p2	Roof Plan	SARM Architects	Aug 2021
A06	p2	Sections	SARM Architects	Aug 2021
-	-	Proposed Instu Capacity	-	-
-	-	Toilet Usage	-	-

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Letter of Support - Adequate Sanitary Facilities	190195	PCA Services	23 January 2024



Acoustic Impact Assessment	PS131027-101	WSP	24 March 2023
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**

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	24 April 2023

(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.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,



- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place. Reason:

Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be



maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork



NSW Codes of Practice.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,420.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$242,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Adequacy of Sanitary Facilities

Prior to issue of the Construction Certificate the Principal Certifier is to be provided with details of sanitary facilities for patrons and staff as required by the National Construction Code (BCA) for the Classification of the building under its approved use. Where a sanitary facility is shared by



another occupancy on the same site the total number of potential users shall be taken into consideration in calculations for compliance with this condition.

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

Reason: To ensure the provision of adequate sanitary and associated facilities for the premises.

8. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

a) Construction of awning roof / extension as conceptually detailed in Part 5.2 Option 2 – Awning extension in the Acoustic Impact Assessment No. PS131027-101 WSP 24 March 2023, referenced on Condition No.1 of this consent.

b) the maximum height of the awning extension is to be no higher 4.2m above the existing ground level of the courtyard on Lot CP SP 61679.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

9. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Compliance Assessment Report prepared by Murrow Consulting, dated 18/5/2023, Report. No. 3250, Rev A, is to be considered as part of the assessment for any Construction Certificate.

Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

10. **Access and Facilities for Persons with Disabilities**

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

11. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.



DURING BUILDING WORK

12. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

13. Acoustic Design Recommendations

The external loudspeaker is to be installed on the façade adjacent to the rear doors under the awning and will be limited to low background noise music.

Noise limiters are to be provided to the external and internal speakers so that the overall combined sound pressure level (dBA) does not exceed 60 dBA.

The limiters shall be set by a suitably qualified acoustic person so that noise emissions comply with the noise criteria specified in Table 4.1 (loudspeaker music noise) of the acoustic Report prepared by WSP dated 24 March 2023, reference PS131027-101 (Rev01).

Reason: To prevent noise nuisance by using mitigation measures in design.

14. External Doors

All external doors to the rear courtyard are to have a self-closing mechanism fitted to the doors to ensure external doors automatically close.

Reason: To prevent noise from internal sources emanating into the courtyard

15. Construction Material

Certification shall be provided from a suitably qualified professional that the northern boundary fence to the residential courtyard has been built with solid construction at greater than or equal to 2.7 meters high as shown in Figure 3.1 of the Acoustic Report dated 24 March 2023 prepared WSP Australia Pty Ltd. New access door on the northern boundary fence to be built of solid construction within minimal gaps between the door leaf and frame and no gaps between the door frame and fence.

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

Reason: To ensure effective noise mitigation construction.

16. Installation/Operation of LPG Facility

The outdoor servery and small storage structures are to be built greater or equal to 3 m high from solid construction in the locations shown in Figure 4.1 of the Acoustic Report prepared by WSP dated 24 March 2023 reference PS131027-101 (Rev01).

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



Reason: To reduce potential noise impacts

17. **Lighting compliance**

Prior to the issue of Occupation Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 1158.3:2020 Pedestrian area (Category P) lighting – Performance and design requirements and Australian Standard 4282:2019 Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity

18. **Certification of Sanitary Facilities - prior to occupation certificate**

Sanitary Facilities shall comply with BCA requirements when any food business is operating.

Reason: To ensure shared Sanitary Facilities will be adequate.

19. **Awning Roof Construction**

The proposed awning extension is to be constructed above the courtyard area according to specifications within Section 5.2 of the Acoustic Report prepared by WSP dated 24 March 2023 reference PS131027-101,

Details demonstrating compliance are to be submitted to the Principal Certifier. Reason:

To reduce negative noise impacts from within the courtyard.

20. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that the design, construction and fit out of the servery, wash and store area within the courtyard is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that food service areas comply with Australian Standard design requirements.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

21. **Noise Management**

Capacity of the outdoor courtyard is limited to 100 patrons. Outdoor courtyard to only operate and be occupied until 10:00pm.

All external doors must be closed when live music or amplified music is played inside. No access to the outdoor courtyard area after 10:00pm every night.

Reason: To ensure acoustic compliance in an operational situation.

22. **Maximum number of patrons**

The maximum number of patrons on the land subject to this consent is to not exceed 200.

The number of patrons within the premises are to not exceed a maximum of:

- a) 100 for the courtyard located on land Lot CP SP 61679.
- b) 100 for the restaurant / bar located on land Lot 1 SP 61679.

This condition does not approve, or apply to any lease/licence under the Roads Act for outdoor



dining.

Reason: To ensure the premises are operated within the parameters of the consent and ensure the adequate ongoing management of amenity impacts on the surrounding area.

23. **Food Safety**

No food (except beverages) is to be prepared within the courtyard area, servery area or wash and store area.

Reason: To comply with fit out of servery/wash/store area

24. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 8.00am to 10.00pm
- Saturday – 8.00am to 10.00pm
- Sunday and Public Holidays – 8.00am to 10.00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

25. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 8am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

26. **Emission of Noise**

The La10* noise level emitted from the licensed premises must not exceed the background of noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) by more than 5dB between 8.00am and 10.00pm at the boundary of any affected residence.

Reason: To ensure reasonable levels of amenity for adjoining residents in the surrounding area.

PROPOSED INSITU CAPACITY



ITEM 4.2	DA2023/0386 - 207-217 PITTWATER ROAD, MANLY - ALTERATIONS AND ADDITIONS TO THE SERVICE STATION INCLUDING AN AUTOMATIC CAR WASH FACILITY, A LAUNDROMAT AND SIGNAGE.
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PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2023/0386 for the Alterations and additions to the service station including an automatic car wash facility, a laundromat and signage on land at Lot 1 DP 829523,207 - 217 Pittwater Road, MANLY for the reasons for refusal set out in the Assessment Report.

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2024/077413
ATTACHMENTS	1 ↓Assessment Report 2 ↓Site Plan & Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0386
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 1 DP 829523, 207 - 217 Pittwater Road MANLY NSW 2095
Proposed Development:	Alterations and additions to the service station including an automatic car wash facility, a laundromat and signage
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	D & H Kane Investments Pty Ltd
Applicant:	The Trustee For Ultra Petroleum Trust

Application Lodged:	03/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	10/05/2023 to 24/05/2023
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 656,064.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the service station. Specifically the application proposes to introduce an automatic car wash facility, a laundromat and new building signage to the site. The site is split across 2 zones, with the majority falling under the E1 Local Centre zone and a smaller portion designated as R1 General Residential.

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application receiving ten (10) unique submissions which object to the proposed development. The concerns raised in the objections primarily pertain to noise, overshadowing, building height, setbacks,

stormwater, traffic, pedestrian safety, quality of external finishes, roof materials and color, operating hours, zoning, pollution, and heritage. These concerns have been addressed during the assessment.

However, the issues and concerns raised in the submissions in relation to solar access, side setbacks, and landscaping are also elements of the development which are non-compliant with the relevant clauses of the Manly Development Control Plan (MDCP) and have an unacceptable impact. As a result, the proposed development cannot be supported in its current form. The impacts generated by these non-compliances form part of the reasons for refusal.

This report concludes with a recommendation that the NBLPP refuse this development application, subject to the recommended reasons attached to the report.

PROPOSED DEVELOPMENT IN DETAIL

Alterations and additions to the existing service station which also incorporates a car wash facility, laundromat and signage as follows:-

"The primary upgrade is to expand the very small sales area into the workshop bay adjacent the existing sales area, and to convert the other workshop bay into an automatic car wash facility to supplement the existing manual wash facility.

A small self-contained laundromat unit is to be installed on the south-eastern corner of the site to provide an additional service for local customers.

TRADING HOURS

The site currently operates in accordance with the trading hours approved by NSW Land and Environment Court Proceedings No. 11218 of 2005, in respect of Manly Council DA No. 433-2004, as follows :

Service Station

The approved service station operating hours are :

- 06.00 to 23.00 Monday to Friday.*
- 07.00 to 23.00 Saturday, Sunday and public holidays.*

Car Wash

- 07.00 to 20.00 Monday to Friday.*
- 08.00 to 20.00 Saturday.*
- 08.30 to 20.00 Sunday and public holidays."*

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 - Zone E1 Local Centre
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - Schedule 5 Environmental heritage
 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 - 4.2.3 Setbacks Controls in LEP Zones B1 and B2
 Manly Development Control Plan - 4.2.8.2 Setbacks
 Manly Development Control Plan - 4.2.8.3 Landscaping
 Manly Development Control Plan - 4.2.8.5 Carparking, Vehicular Access and Loading Controls
 Manly Development Control Plan - 4.2.8.6 Hours of Operation
 Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 1 DP 829523 , 207 - 217 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Pittwater Road.</p> <p>The site is irregular in shape with a frontage of 61.89m along Pittwater Road and a depth of 35.9 metres. The site has a surveyed area of 1012m².</p> <p>The site is located within the E1 Local Centre and R1 General Residential zone accommodates a service station with a covered fuel dispensing area, small sales area, two (2) bay mechanical workshop and a car washing facility.</p> <p>The site has a slight slope running from the rear to the front of the site. There is no vegetation currently on the site and there are no details of any threatened species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential flat buildings, dwelling houses, semi-detached dwellings, and commercial premises. The subject site is located in Pittwater Road Conservation Area.</p>

Map:



SITE HISTORY

DA433/2004 - Existing Service Station and Store Open 24 hours/7 days and Self Serve Carwash was Refused on 18 October 2004 for the following reasons:-

1. The proposal is not considered to satisfy the relevant objectives of the Residential Zone under the Manly LEP 1988, particularly with respect to the objective of maintaining neighbours amenity.
2. Pursuant to Section 79C(b) of the Environmental Planning and Assessment Act the proposal, which is an intensification of an existing use is considered to result in unreasonable building to the amenity of neighbouring dwellings in terms of noise levels and duration of operating hours and light spread.
3. Pursuant to Section 79C(d) of the Environmental Planning and Assessment Act the proposal is not considered to satisfactorily address issues raised in neighbours submissions.
4. Pursuant to Section 79C(e) of the Environmental Planning and Assessment Act the proposal is considered unacceptable in context of the Public Interest.

The site currently operates in accordance with the trading hours approved by NSW Land and Environment Court Proceedings No. 11218 of 2005, in respect of Manly Council DA No. 433-2004 and this was approved on 12 April 2005 as follows :

Service Station

The approved service station operating hours are :

- 06.00 to 23.00 Monday to Friday.
- 07.00 to 23.00 Saturday, Sunday and public holidays.

Car Wash

- 07.00 to 20.00 Monday to Friday.
- 08.00 to 20.00 Saturday.
- 08.30 to 20.00 Sunday and public holidays.

DA403/2008 - Demolition of existing fuel canopy, carwash shade structures and construction of new fuel dispensing canopy, new underground storage tank and dispensing pumps was approved on 15 June 2009. It is noted that the approved hours of operations were not altered by this application and hours of operations remain as approved via DA433/04.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Council internal referral comments and planning comments. Subsequently, the applicant provided amended documentation to satisfy Council's internal referral bodies, however the solar access diagrams demonstrated a non-compliance with the relevant MDCP control and this will form one of the reasons for refusal of this application.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter could be addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of 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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not 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	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of Council's development controls in regard to: side setback, solar access and landscaping due to the lack of side setback and proximity of the carwash building to adjoining residential properties to the south and west of the subject site.</p> <p>This will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

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 application has been publicly exhibited from 10/05/2023 to 24/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Anne Evans Mr Timothy John Evans	4 Golf Parade MANLY NSW 2095
Mr Robert Maxwell Owen Ellis	6 Golf Parade MANLY NSW 2095
Mrs Eva Meagher	225 Pittwater Road MANLY NSW 2095
Mrs Lisa Jane Buncle	226 Pittwater Road MANLY NSW 2095
Ms Sarah Louise Paine	2 Golf Parade MANLY NSW 2095
Ms Kirsty Fleming Drummond	219 Pittwater Road MANLY NSW 2095
Ms Michelle Ann Egan Mr Andrew Thomas Jopling	8 Golf Parade MANLY NSW 2095
Mrs Margaret Louise Williams	2 / 220 Pittwater Road MANLY NSW 2095
Withheld	MANLY NSW 2095
Mr Anthony Richard Long	230 Pittwater Road MANLY NSW 2095

The following issues were raised in the submissions:

- Acoustics
- Shadow access
- Building height and setback
- Quality of the new building external walls on the boundary
- Sewer in southwest corner
- Rainwater tanks behind No. 2 Golf Parade and stormwater
- Site traffic flow, traffic and pedestrian safety
- Operating hours
- A number of other carwash facilities within the area (why another one)
- Pollution and fumes
- The proposed redevelopment will attract many more customer in vehicles
- Heritage protected area
- Zoning
- Damage to property
- Use of the existing hand carwash and vacuum facilities outside the approved hours
- Lack of information submitted with the development application
- Water use
- Impacts on the ecosystem
- The petrol station systematically refuels between the hours of 2400 to 0300 several times a week.

The above issues are addressed as follows:

- Acoustics**

The submissions raised concerns that the acoustic report is misleading. *"The location of the air conditioning and exhaust fans are not evident on the plans although apparently known to the acoustic assessor. It should be noted that even the current air compressor intermittently turning on is a significant noise annoyance at 7am onwards, so I have a great concern about any externally located a/c, pumps, exhaust fans or other equipment."*

Comment: A Noise Assessment was completed by an Acoustic Consultant which measured existing ambient noise levels and noted possible noise sources from mechanical plant, the automatic vehicle wash, vehicle wash plant room and laundry kiosk and also included noise modelling (cumulative site noise - please see below) within their assessment.

Table 7. Summary of Predicted Cumulative LAeq Noise Levels

L_{Aeq,15min} dBA re: 20 x 10⁻⁶ Pa

Description	Assessment Noise Levels DBA			Calculated Sound Pressure Levels dBA			
	Day	Evening	Night	Day	Evening	Night	Day
Assessment Location M1: 5 Collingwood Street							
	55	48	39	43	43	-	✓
Assessment Location M2: 224 Pittwater Road							
	55	48	39	38	38	-	✓
Assessment Location M3: 219 Pittwater Road							
	55	48	39	45	45	-	✓
Assessment Location M4: 4 Golf Avenue							
	55	48	39	39	39	-	✓
Assessment Location M5: 8 Golf Avenue							
	55	48	39	39	39	-	✓

NOTE:

- i Day: 7.00am to 6.00pm Monday to Saturday, 8.00am to 6.00pm Sunday and public holidays
- ii Evening: 6.00pm to 10.00pm
- iii Night: 10.00pm to 7.00am Monday to Saturday, 10.00pm to 8.00am Sunday and public holidays

Figure 1 - Source: Noise Assessment completed October 2023 prepared by Atkins Acoustics and Associates Pty Ltd.

The Conclusion and Recommendations of this report were review by Council's Environmental Health Officer which supported the proposal from an acoustic assessment and recommended additional conditions including the recommendations of the Noise Assessment Report prepared by the Acoustic Consultant be included should the proposed development be recommended for approval.

Given the above it is considered that this issue has been adequately address and does not warrant refusal of this application in this regard.

- **Solar access**

The submission(s) raised concerns that solar diagrams reinforced the impact of the proposed development on adjoining residential properties, in particular No. 4 Golf Parade, Manly and that no solar access assessment of the proposed development was completed for No. 2 Golf Parade, Manly.

Comment: The solar access assessment, conducted in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP, is comprehensively detailed in this assessment report. In summary, the assessment concludes that due to the height and insufficient side setbacks from the western and southern boundaries proposed by the carwash building, coupled with the location of private open spaces (especially at No. 4 Golf Parade), which will be in shadow from 9am through to 2pm during the winter solstice, the development falls short of providing adequate solar access to the adjoining residential property, as mandated by this DCP provision. It is further noted that No.2 Golf Parade is shaded by the existing service station during the winter solstice between the hours of 9 am - 3 pm.

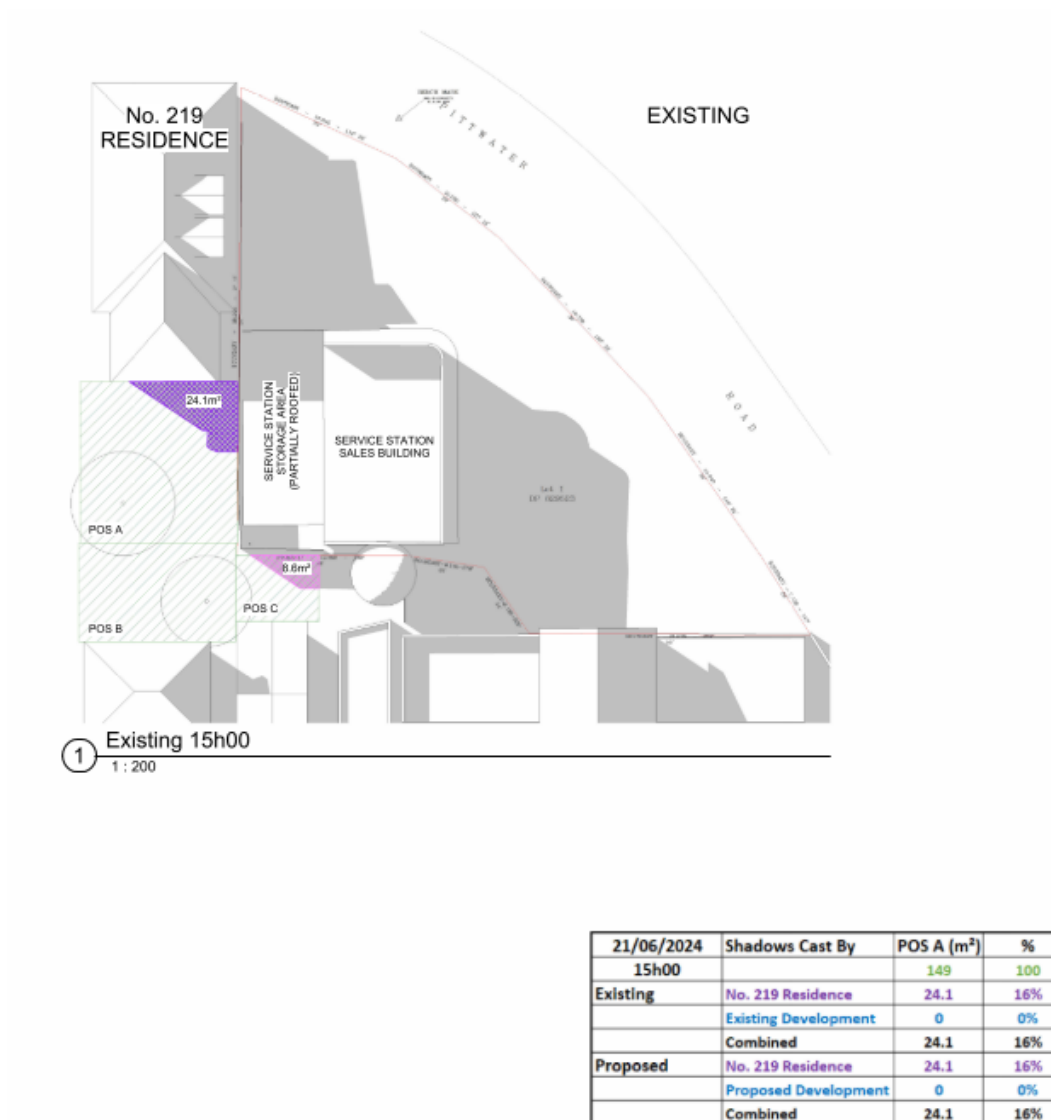


Figure 2 - Shadow Study prepared by Jan Ellis

Given this, it is deemed that this issue has been sufficiently addressed, and this identified deficiency will serve as a reason for the refusal of the proposed development.

- Building height and setback**

The submissions raised concerns that the proposed building height was excessive and lack of side setback to the southern boundary would reduce the extensive shadowing to the adjoining residential properties.

Comment: Council identified a number of issues on 16 November 2023, regarding the height, side setbacks, and overshadowing impact of the proposed carwash building. In response, the applicant submitted amended architectural plans, incorporating solar assessment diagrams and a written response, on 6 December 2023. Notably, the amended plans have substantially reduced the overall building height from the original submission, reflecting a reduced building height of 3 metres from 3.8 metres (an overall reduction of 21%).

However, despite the reduction in height, the lack of side setbacks, the differences in levels between the subject site and adjoining residential properties, and the proximity of the carwash building still contribute to non-compliance with Clause 3.4.1 Sunlight Access and Overshadowing and Clause 4.2.8.2 Setbacks of the MDCP.

Given the above it is considered that this issue has been adequately addressed and this deficiency (side setback) will serve as another reason for the refusal of the proposed development.

- **Quality of the new building external walls on the boundary**

The submissions raised concerns that about the quality and finishes of the external walls of the carwash building.

Comment:

The concern regarding the nature of the walls has been raised with the applicant, and it is duly noted on the amended plans that the walls are rendered and painted masonry boundary fence and wall(s). In the event that the development secures approval, a condition would be necessary to ensure this particular outcome.

- **Sewer in southwest corner**

The submissions raised concerns that the sewer manhole located in the southwest corner of the subject site and the sewer line vent.

Comment: If the development were to be approved, a condition would be recommended which requires Sydney Water approval before the issuing of the Construction Certificate. This condition is necessary to ascertain whether the development would have any impact on Sydney Water Assets. The inclusion of such a condition reflects a standard procedural step to ensure compliance with Sydney Water Requirements and Guidelines and to safeguard existing infrastructure.

- **Rainwater tanks behind No. 2 Golf Parade and stormwater**

The submissions raised concerns over access for maintenance and requirements for bunding for leaks/overflow to surrounding properties. Noise from pumps or water gravity feed to the drain (Council Stormwater Infrastructure).

Comment: Council had initially requested additional information regarding compliance with Council's Water Management for Development Policy and on-site stormwater detention (OSD) requirements, necessitating the installation of new rainwater/OSD tanks. On November 14, 2023, the applicant submitted stormwater plans to Council. Following a thorough review by Council's Development Engineering Department, the drainage design was supported, albeit subject to specific recommended conditions.

The proposed rainwater/OSD tanks will be connected to the roof areas, with any overflow directed by gravity to the northwest corner of the site and subsequently discharged into Council's Stormwater Drainage system.

Given these developments, it is deemed that the concern raised by adjoining residents and Council has been adequately addressed. It is suggested that, should the application be approved, appropriate conditions be included so as to ensure continued compliance with stormwater management requirements.

- **Site traffic flow, traffic and pedestrian safety**

The submissions raised concerns that about vehicular movements on the site in particular between the building and a vehicle located at pump 1 and therefore creating a knock-on effect resulting in queuing onto the pathway and Pittwater Road and pedestrian safety.

Comment: A Traffic Impact Assessment completed by a Traffic Consultant which was initially lodged with the development application and a summary of the traffic generation was as follows:-

Table 5.2: Summary of Traffic Generation – Weekday Road Network Peak Periods

Land Use	Existing Size	Existing Traffic Generation		Proposed Size	Proposed Traffic Generation		Traffic Generation Net Difference	
		AM Peak	PM Peak		AM Peak	PM Peak	AM Peak	PM Peak
Service Station	6 Pumps (P)	88	137	6 Pumps (P)	88	137	+0	+0
Car Wash	1 car wash bay	5	5	2 car wash bays	10	10	+5	+5
Workshop Bays	2 workshop bays	8	8	N / A	0	0	- 8	- 8
Laundromat	N / A	0	0	1 Laundromat	2	2	+2	+2
Net Balance							-1	-1

Figure 3 - Source: Traffic Impact Assessment dated 31 March 2023 prepared by The Transport Planning Partnership

The traffic impact assessment establishes that the net balance between existing and proposed uses will result in a minimal reduction in overall vehicle movements. The Council's Traffic Engineer has conducted a thorough review, assessing the subject site and considering comments and conditions from Transport for NSW (TfNSW). A detailed evaluation is accessible in the assessment report under the section titled "Internal Referrals - Traffic Engineer."

To address pedestrian safety concerns, conditions could be imposed for the installation of signage at entry and exit points with "BEWARE PEDESTRIANS," along with line marking on the driveway and pathway. Additionally, a condition may be applied for the installation of a barrier and/or bollards along the pathway between the entry and exit driveways to ensure pedestrian safety.

In summary, the traffic generated by the proposed redevelopment is determined not to have adverse effects on the surrounding road network. The proposal is deemed supportable from both a traffic and pedestrian perspective, contingent upon the inclusion of specified conditions (if the proposal were to be approved).

- **Operating hours**

The submissions raised concerns about the proposed hours of operations of the mechanical carwash and the laundry particularly on weekends and public holidays and the possible impacts on recreational area of all the Golf Parade properties. A request for limiting operation hours initially to fully assess the actual acoustic and traffic impact once the site is fully operational.

Comment: A review conducted by Council's Environmental Health Department concludes that the proposed operations are deemed acceptable based on an acoustic assessment. The department recommends the inclusion of additional conditions, aligning with the suggestions outlined in the Noise Assessment Report prepared by the Acoustic Consultant, should the proposed development receive approval.

The proposed operating hours are provided below and are deemed consistent with those of other nearby carwash facilities and within the local government area. Notably, the laundromat is situated within the main building, leading to the consideration that its operating hours would not impose a significant acoustic impact, subject to the inclusion of specified conditions in the event of approval.

Service Station

The approved service station operating hours are :

- 06.00 to 23.00 Monday to Friday.
- 07.00 to 23.00 Saturday, Sunday and public holidays.

Car Wash

- 07.00 to 20.00 Monday to Friday.
- 08.00 to 20.00 Saturday.
- 08.30 to 20.00 Sunday and public holidays.

- **Roofing materials**

The submissions raised concerns that proposed roof over the carwash building proposes new zincalume roof sheeting and has the potential to create reflection on to neighbouring properties.

Comment: It is accepted that the proposed zincalume roof sheeting could potentially result in reflectivity issues for adjacent residential properties. In the event of approval, a condition could be incorporated to require the use of a roof sheeting material in medium to dark colors. Such a Condition would ensure the preservation of reasonable amenity for neighboring residential properties by minimizing the potential for glare and reflective impacts associated with the

proposed roofing material.

- **A number of other carwash facilities within the area (why another one)**

The submissions raised concerns why is a mechanic carwash facility proposed when there other carwash facilities available.

Comment: The proposed carwash is characterized as an ancillary use to the service station, aligning with the permissible uses outlined within the E1 Local Centre zone. The property owners have made a commercial decision to incorporate a mechanic carwash facility and are following the appropriate processes by seeking approval through Council. This approach ensures compliance with zoning requirements and local planning regulations, reflecting a responsible and lawful course of action for the intended development.

- **Pollution and fumes**

The submissions raised concerns over pollution and fumes generated by vehicles while within the mechanic carwash facility.

Comment: If the proposed mechanic carwash facility received approval, it could be subject to a condition mandating the installation of a mechanic exhaust fume extraction system. This system would serve to collect fumes generated by vehicles within the facility, extracting any pollutants before directing them through an exhaust system away from nearby residential properties. This condition aims to mitigate potential environmental impacts, ensuring that the operation of the carwash facility does not adversely affect the air quality and well-being of neighboring residents.

- **The proposed redevelopment will attract many more customer in vehicles**

The submissions raised concerns with the extended retail space, automatic carwash and laundromat will attract many more customers in vehicles to the site.

Comment: As mentioned earlier, a comprehensive traffic assessment has been conducted and thoroughly reviewed by Council's Traffic Engineer. The assessment concludes that, with the removal of the workshop and the redevelopment of the site to accommodate reconfigured retail space, an automatic carwash, and a laundromat, there will not be a significant change in the current traffic movements on the site. This finding suggests that the proposed development is not expected to cause a substantial impact on the existing traffic patterns and movements within and around the subject site.

- **Heritage protected area**

The submissions raised concerns over the construction of carwash at this location within a heritage protected area.

Comment: The subject site falls within the C1 - Pittwater Road Conservation Area and is in proximity to a heritage item listed in Schedule 5 of Manly Local Environmental Plan 2013, specifically Item I 212 - House at 226 Pittwater Road, Manly. The Council's Heritage Officer conducted a review of the proposal with the following observations:

"The upgrading of the retail services area involves changes to the building's street presentation, but mainly remains within the existing building footprint, therefore the proposed changes to the street façade are considered to have a negligible impact upon the significance

of the conservation area. However, the size of the proposed vinyl graphics on the sliding doors and full-height windows are considered to not comply with the controls of Manly DCP 2013:

4.4.3.2 Signage on Heritage listed items and in Conservation Areas

i) Signs on shop windows should not exceed 25 percent of the window area;

Furthermore, the Heritage Impact Statement, submitted with this application states that: 'Should Council wish to put forward their preferred palette of colours, materials and finishes as an alternative to what has been proposed, the applicant would be amenable to taking on the advice of Council's heritage advisor in this regard.' However, the proposed colors and finishes are not specified in the documents.

Therefore, no objections are raised on heritage grounds, subject to two conditions."

Considering the above, it is deemed that the proposal is satisfactory on heritage grounds, subject to the incorporation of appropriate conditions, in the event that the development is approved.

- **Zoning**

The submissions raised concerns over site been zoned residential with existing use rights but the use seems to be ever expanding over and above the petrol station use in contravention of the zoning.

Comment: The site is predominately zoned E1 Local Centre with a very portion of the site zoned R1 General Residential zone. A detailed assessment has been undertaken under Existing Use Rights of this assessment report. In short, the proposed works are all within the E1 Local Centre zone and therefore the proposed development is permissible (with consent). The area zoned R1 General Residential zone is an existing parking space where there no works to be undertaken and therefore this area benefits from previous approval (DA403/2008) was approved on 15 June 2009 for the Demolition of existing fuel canopy, carwash shade structures and construction of new fuel dispensing canopy, new underground storage tank and dispensing pumps).

- **Damage to property**

The submissions raised concerns over damages to property during previous works carried out on the subject site and potential damages from these proposed works.

Comment: During the site inspection, the owner of No. 219 Pittwater Road raised concerns about previous damages to the dwelling house resulting from excavation works at the service station. If the proposed development is approved, conditions for both pre and post dilapidation surveys would be imposed. These surveys are essential to safeguard the adjacent property (No. 219 Pittwater Road) by documenting its condition before the commencement of the development and after its completion. This precautionary measure aims to ensure that any potential impacts on the neighboring property are identified, addressed, and appropriately mitigated.

- **Use of the existing hand carwash and vacuum facilities outside the approved hours**

The submission raised concerns over the use of hand carwash and vacuum facilities outside the approved hours.

Comment: The concern raised by the owner of No. 219 Pittwater during the site inspection was acknowledged, and advice was provided to document and log these occurrences. The owner was advised to submit a complaint to Council, enabling the relevant departments within Council to take appropriate actions to address the reported issues. This approach ensures a formal record of the concerns, allowing for a systematic and official response to address any impacts resulting from these activities.

- **Property prices**

The submission raised concerns over potential devaluation of property prices should the development be approved.

Comment: Property prices are not a matter for consideration as they are subject to market forces.

- **Lack of information submitted with the development application**

The submission raised concerns over lack of elevations, shadow diagrams, materials schedule and acoustic report.

Comment: Council has sought additional information from the applicant throughout the assessment of this development application, including shadows diagrams, amended plans, an acoustic report, stormwater plans (incorporating rainwater/OSD), and groundwater testing results. It is determined that there is now sufficient data to conduct a comprehensive assessment of the application.

Significantly, all external referral bodies and Council's referral departments have expressed support for the proposal, albeit subject to specified recommended conditions. Additionally, it is suggested that the finishes to the building walls and roof color/materials could be conditioned in the event of the proposed development receiving approval. This measure is proposed to address concerns raised by residents during the assessment of this application, highlighting the importance of addressing community feedback in the decision-making process.

- **Water use**

The submission raised concerns over use of water and such facility could strain our limited water resources.

Comment: The proposed carwash facility would require a license from Sydney Water and this matter would be assessed by that authority.

- **Impacts on the ecosystem**

Comment: If the proposed mechanic carwash is approved, it would be subject to conditions requiring appropriate bunding to prevent chemically treated waters from leaving the facility. Additionally, the issuance of a wastewater license by Sydney Water would be required for draining all chemically treated waters to the Sydney Water Wastewater Systems. Such conditions are crucial for ensuring environmental compliance and preventing the release of harmful substances into the surrounding environment.

- **The petrol station systematically refuels between the hours of 2400 to 0300 several times a week.**

The submission raised concerns over the refueling tanker filling the service station outside the hours of operations.

Comment: This concern relates to the existing service station operations and is unrelated to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported - subject to conditions</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>Supported - subject to conditions</p> <p>General Comments The applicant advises: 1EXISTING FACILITY. ULTRA Petroleum Group Pty Ltd (UPG hereafter in this report), currently operates a combined retail service station and car wash facility at the subject site. The service station incorporates a two bay workshop which is leased out. The UPG Manly site has a very strong local customer base built on many years of service to the local community and UPG believes it is imperative to update the site facilities to ensure the independence and security of the business, and continue providing high quality services for the local community. The proposed upgrade to the facility will ensure this continuity. 2. UPGRADED FACILITY The primary upgrade is to expand the very small sales area into the workshop bay adjacent the existing sales area, and to convert the other workshop bay into an automatic car wash facility to supplement the existing manual wash facility. A small self-contained laundromat unit is to be installed on the south-eastern corner of the site to provide an additional service for local customers. Food will not be prepared on the site and there will be no cooking within the service station facility.</p>

Internal Referral Body	Comments
	<p>Car Wash - 07.00 to 20.00 Monday to Friday. - 08.00 to 20.00 Saturday. - 08.30 to 20.00 Sunday and public holidays. No Change to Existing There is no change to the approved operating hours for the service station or car wash facilities.</p> <p>New Automatic Car Wash Facility The southern workshop bay will be decommissioned and converted into a new automatic car wash facility, with the addition of a new masonry wall between the wash bay and the newly extended sales area. Wash equipment will be located in new dedicated equipment rooms located within the exit from the car wash bay. Vehicles will enter the new wash bay from the front of the building in the same manner as previous users of the existing workshop. On completion of the wash process vehicles proceed through the rear of the building into a dedicated driveway and thence into the main car wash exit onto Pittwater Road. A new masonry boundary fence will be constructed on the western side of the car wash exit driveway, extending from the southern boundary to the northern boundary. The car wash exit driveway will be roofed between the main service station building and the new wall.</p> <p>Car vacuuming and detailing remains under cover in a bunded area. Comment: Additional Information 1/11/2023 Review An acoustic assessment has been undertaken and subject to some 17 recommendations it is anticipated that acoustic compliance can be achieved. On this basis Environmental Health supports the proposal with conditions.</p>
NECC (Development Engineering)	<p><i>Supported - subject to conditions</i></p> <p>The impervious area of the site exceeds 60% of the site area and as such in accordance with Council's Water Management for Development Policy, on-site stormwater detention (OSD) is required for the proposal. A concept stormwater management plan including OSD is required for the proposal.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address stormwater management in accordance with clause 3.7 of the DCP.</p> <p>Additional information submitted 13/11/2023</p> <p>The submitted stormwater management plans including OSD are acceptable.</p>

Internal Referral Body	Comments
	Development Engineering support the proposal, subject to conditions as recommended.
Strategic and Place Planning (Heritage Officer)	<i>Supported - subject to conditions</i>
	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject property is located in C1 - Pittwater Road Conservation Area and within the vicinity of a heritage item, listed in Schedule 5 of Manly Local Environmental Plan 2013:</p> <p>Item I 212 - House - 226 Pittwater Road, Manly</p>
	Details of heritage items affected
	<p>Details of the heritage items and the conservation area, as contained within the Manly Heritage Inventory are:</p> <p>C1 - Pittwater Road Conservation Area</p> <p><u>Statement of Significance</u></p> <p>This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical Description</u></p> <p>The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed separately. Adjacent streets generally comprise a consistent pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.</p> <p>Item I 210 -House</p> <p><u>Statement of Significance</u></p> <p>A rare example of Victorian Rustic Gothic style villa.</p> <p><u>Physical Description</u></p> <p>2-storey Victorian Rustic Gothic style painted brick house with gabled corrugated iron roof. Significant elements include: pointed 'gothic' windows to first floor and ground floor window beneath gable; tuck pointed brickwork; front door, fanlight and sidelights (original); decorative plaster hood moulds to windows; multi-pane coloured glass to top of main window ground floor; late Victorian</p>

Internal Referral Body	Comments	
	Chimney pots; original joinery to ground floor verandah.	
	Other relevant heritage listings	
	SEPP (Biodiversity and Conservation) 2021	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	No
	Consideration of Application	
	<p>The proposal seeks consent for alterations and additions to an existing service station including the internal reconfiguration and enlargement of the retail service area, the addition of an accessible toilet and upgrading of the signage and some additional peripheral promotional images. The upgrading of the retail services area involves changes to the building's street presentation, but mainly remains within the existing building footprint, therefore the proposed changes to the street facade are considered to have negligible impact upon the significance of the conservation area. However, the size of the proposed vinyl graphics on the sliding doors and full height windows are considered to not comply with the controls of Manly DCP 2013:</p> <p><i>4.4.3.2 Signage on Heritage listed items and in Conservation Areas</i></p> <p><i>i) Signs on shop windows should not exceed 25 percent of the window area;</i></p> <p>Furthermore, the Heritage Impact Statement, submitted with this application states that: "<i>Should Council wish to put forward their preferred palette of colours, materials and finishes as an alternative to what has been proposed, the applicant would be amenable to taking on the advice of Council's heritage advisor in this regard.</i>" However, the proposed colours and finishes are not specified in the documents.</p> <p>Therefore no objections are raised on heritage grounds, subject to two conditions.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No</p>	

Internal Referral Body	Comments
	<p>Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>
Traffic Engineer	<p><i>Supported - subject to conditions</i></p> <p><u>Proposal description:</u> Alterations and additions to the service station including an automatic car wash facility and a laundromat.</p> <p>The proposed development comprises the following key features:</p> <ul style="list-style-type: none"> • Removal of two existing workshop bays. • Expansion of the existing convenience store sales floor area from 32m² to 64m². • Provision of an additional automatic car wash bay. • Construction of a new self-contained laundromat facility. • Modification of the at-grade parking facilities and retention of five car parking spaces. • Provision of one loading bay for Small Rigid service vehicles, located adjacent to the convenience store. <p>The Traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> • Traffic Impact Assessment report prepared by The Transport Planning Partnership (tpp) dated 31 March 2023, • The Statement of Environment Effects prepared by R.J. SINCLAIR Pty Ltd Building Design, dated 30 March 2023, • Waste Management Plan, prepared by R.J. SINCLAIR Pty Ltd Building Design, and • Master Set, Plans, Project No. 08-045-22, designed by R.J. SINCLAIR Pty Ltd Building Design, dated 30 March 2023. <p>It is noted that:</p> <ul style="list-style-type: none"> • The existing trading hours will be maintained for the proposed service station and car wash facilities. • The proposed development will maintain the four access driveways off Pittwater Road and there are no changes to the access and egress points to and from Pittwater Road to the site. • The new car wash facility comprises a new driveway around the rear of the convenience store. Car wash

Internal Referral Body	Comments
	<p>users will exit the site via the northernmost driveway onto Pittwater Road.</p> <p><u>Parking requirement and design:</u></p> <ul style="list-style-type: none"> • The site is subject to the Manly DCP, which mandates that Service Stations that include Workshop Facilities must provide ten (10) parking spaces. Additionally, the Guide to Traffic Generating Development by TfNSW specifies that the car parking requirement for service stations depends on the convenience store GFA, number of work bays, and restaurant GFA/seats. • There would be no workshop facility as part of the redevelopment. Therefore, application of the TfNSW Guide car parking rates (5 spaces per 100m² GFA of a convenience store, 6 spaces per work bay and the greater of 15 spaces per 100m² GFA of a restaurant and 1 space per 3 seats) to the proposed development (64m² GFA convenience store, no work bay, no restaurant and a small-size laundromat service) would result in a parking requirement of 4 parking spaces. Parking in excess of TfNSW requirement is proposed (5 spaces). The additional one (1) car parking space would be used to accommodate parking associated with the laundromat. This is considered acceptable given its small size, and that the laundromat service would attract only local residents within walking distance. • According to the TIA report, only two workshop bays will be removed in the proposed plan. Aerial imagery shows that all four parking spaces in front of the car wash exit point will be taken away to allow for vehicle movement. • From the Aerial imagery of different years and months, it seems that the existing 10 parking spaces are consistently full. Some informal parking has been also noted in the aerial imagery at times when the defined parking spaces were occupied. This is acceptable as it does not appear to interfere with on site operations • It is noted that one (1) loading bay is proposed at the frontage of the convenience store to accommodate service vehicles up to a size of a 6.4m Small Rigid Vehicle (SRV). It is reported in the TIA report that servicing and deliveries would generally be undertaken outside of the road network peak hours (early morning or late evening), which would result in minimal impacts on the surrounding roads and the service station operation. • A swept path analysis has been included in Appendix B of the traffic report. The swept path appears to have incorporated the 300m clearance lines required by AS2890.1 section B.3.2, it, however, shows a tight

Internal Referral Body	Comments
	<p>vehicle turning path with some encroachment to the car wash bay exit door. The swept path assessment should be undertaken, using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carwash bay. This will be conditioned.</p> <ul style="list-style-type: none"> No plots for access to and from the loading bay have been provided. Additional swept path plots will be conditioned to demonstrate that access to the loading area by a 6.4m SRV is possible as required by AS2890.2. The DCP requires bicycle parking at a rate of 1 space for every three (3) car spaces, i.e., 2 spaces required. It is reported in the TIA that a bicycle parking area will be provided near the entrance to the convenience store, which is sufficient to accommodate up to two bicycle spaces. Bicycle parking spaces are not presented in the architectural plans. This will be conditioned. Although the parking space dimensions (minimum space width of 2.7 metres and length of 5.4 metres for light vehicles and minimum space width of 3.5 metres and length of 6.4 metres for loading vehicles) presented in the report are compliant with Australian Standard requirements, the parking spaces widths and the loading bay width have not been dimensioned on the architectural plans. It will be conditioned that dimensioned plans be submitted for the parking area including the carwash bay width to confirm that parking bays are appropriately sized. Considering the survey data of queueing requirements for car wash bays including three separate sites which comprise 1, 2 or 4 automatic car washing bays, the estimated queueing requirement of 2.5 vehicles per car wash bay have been adopted, i.e., queueing area of three vehicles for the development. The proposed car wash facility provides a total vehicle queueing area for three (3) vehicles excluding the one vehicle already within the auto car wash facility and therefore meets the required demand. <p><u>Traffic impact</u></p> <ul style="list-style-type: none"> The traffic generation of the proposed redevelopment has been determined by considering the analysis of survey sites that include a service station and a convenience store. It also considered the analysis of survey data of several car wash facilities. The proposed development is therefore expected to generate similar levels of traffic during the peak periods, when compared to the existing operation. Therefore, it will not result in any adverse impacts on the surrounding road network.

Internal Referral Body	Comments
	<p><u>Conclusion</u></p> <p>Subject to conditions, the application can be supported from a traffic perspective.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported - subject to conditions</i></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.122 - Traffic generating development	<p><i>Supported - subject to conditions</i></p> <p>TfNSW has reviewed the submission and recommends that the following requirements is included in any Consent issued by Council:</p> <ol style="list-style-type: none"> 1. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted Pittwater Road. 2. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pittwater Road during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30 metres of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to recommended conditions, should the development be recommended for approval.

Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—

(i) the design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or

(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The application was referred to Transport for NSW who did not raise any objection to the proposal subject to recommended conditions.

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposal is compatible with the existing and future character of the area.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no particular theme for outdoor advertising in this locality, as such this provision is not applicable.	N/A
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposal does not unduly detract from the amenity or visual quality of the Pittwater Road Conservation Area.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise any important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	As the proposed signage is affixed to subject site, the signage will not impact upon the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signage is appropriate for the streetscape and setting.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal will positively contribute to the visual impact of the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage will not result in any significant visual clutter. The proposal includes the reinstatement of existing signage, and new signage that is considered to be simple and visually appropriate.	YES
Does the proposal screen unsightliness?	The proposal is not considered to be unsightly, as such the proposal does not screen any unsightliness.	YES

Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage is affixed to the existing development, and as such will not protrude above buildings, structures, or tree canopies.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signage is compatible with the scale and proportion of the building facades to which the proposed signage is to be affixed.	YES
Does the proposal respect important features of the site or building, or both?	The proposed signage respects the features of the site and building. The reinstatement of the existing building identification signage respects the historical features of the site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is appropriate to the site and building.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	There are no safety devices, platforms, lighting devices or logos proposed. Therefore, this provision is not applicable.	N/A
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The proposed signage is not illuminated. As such a suitable condition could be included if the proposed development were to be approved.	N/A
Can the intensity of the illumination be adjusted, if necessary?	The proposed signage is not illuminated.	N/A
Is the illumination subject to a curfew?	The proposed signage is not illuminated.	N/A
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage will not result in reduced safety for public roads, pedestrians or bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage will not reduce the safety for pedestrians or obscure sightlines from public areas.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed development is not considered likely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, coastal environmental values and natural coastal processes, the water quality of the marine estate, native vegetation and fauna and their habitats, public open space or aboriginal cultural heritage.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is not considered likely to cause an adverse impact on safe access to and along the foreshore, overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands, or cultural and built environment heritage.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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

Coastal Management Act 2016

The subject site identified as Coastal use area under the Coastal Management Act 2016.

The management objectives for the coastal use area are as follows:

"(a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:
(i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and
(ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and
(iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and

- (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
 (v) the use of the surf zone is considered,
 (b) to accommodate both urbanised and natural stretches of coastline."

Comment:

The visual amenity from public space is not adversely effected. In addition, the surrounding area consists of examples of similar developments.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the consent authority to consider whether land is contaminated, and if it is contaminated is satisfied that the contamination can be remediated for the land use and/or development proposed.

In response to the above requirements of Chapter 4, the applicant has submitted a 6 Monthly Groundwater Testing Results dated 9 December 2022 and prepared by Aurora Environmental Consulting. In its conclusion, the investigation states:

"The testing found groundwater samples in all wells at the site to be clear, with no visual or olfactory evidence of petroleum hydrocarbons."

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for a service station for an extended period of time with no prior land uses.

Having regard to the ground water sampling and monitoring information submitted for the site as well as the continued use of the site for the purposes of a service station, it is considered that the extent of works are such that the likelihood of contamination is low and with regard to the extent of works and the continued primary landuse no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the continued service station land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	4.9m	-	Yes
Floor Space Ratio	FSR: 1:1 (1012m ²)	FSR: 0.23:1 (227.5m ²)	-	Yes

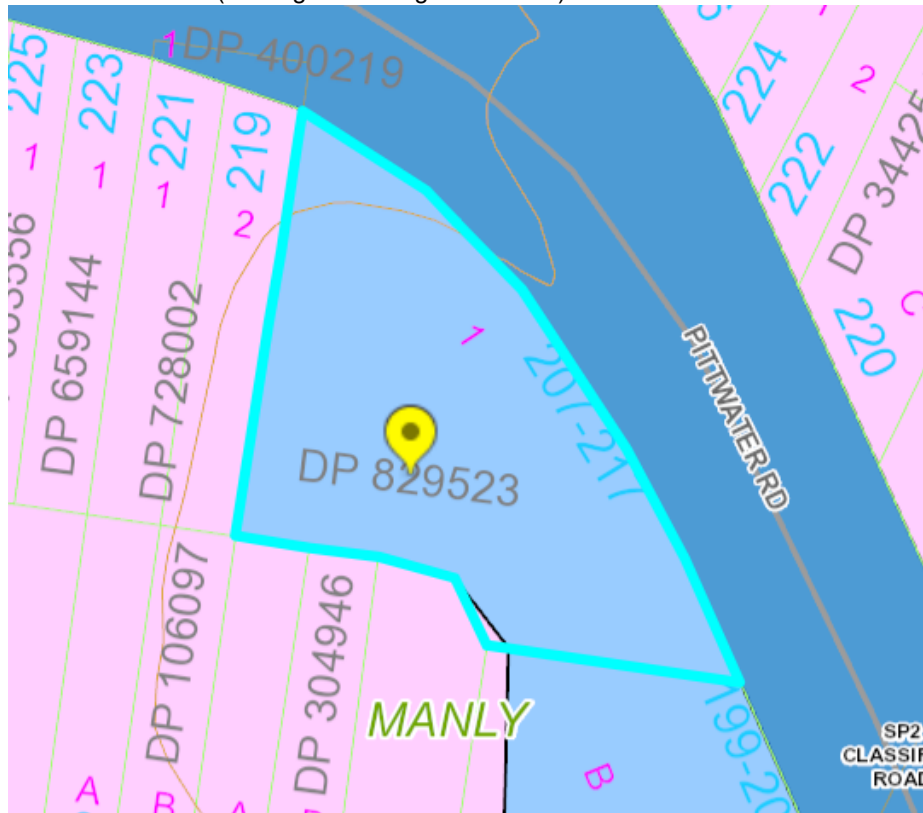
Compliance Assessment

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
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
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone E1 Local Centre

The subject site is zoned primarily E1 Local Centre under Manly Local Environmental Plan 2013 (MLEP 2013), however a small portion of the subject site to the west is zoned R1 General Residential under MLEP 2013 (see Figure 1 & Figure 2 below).



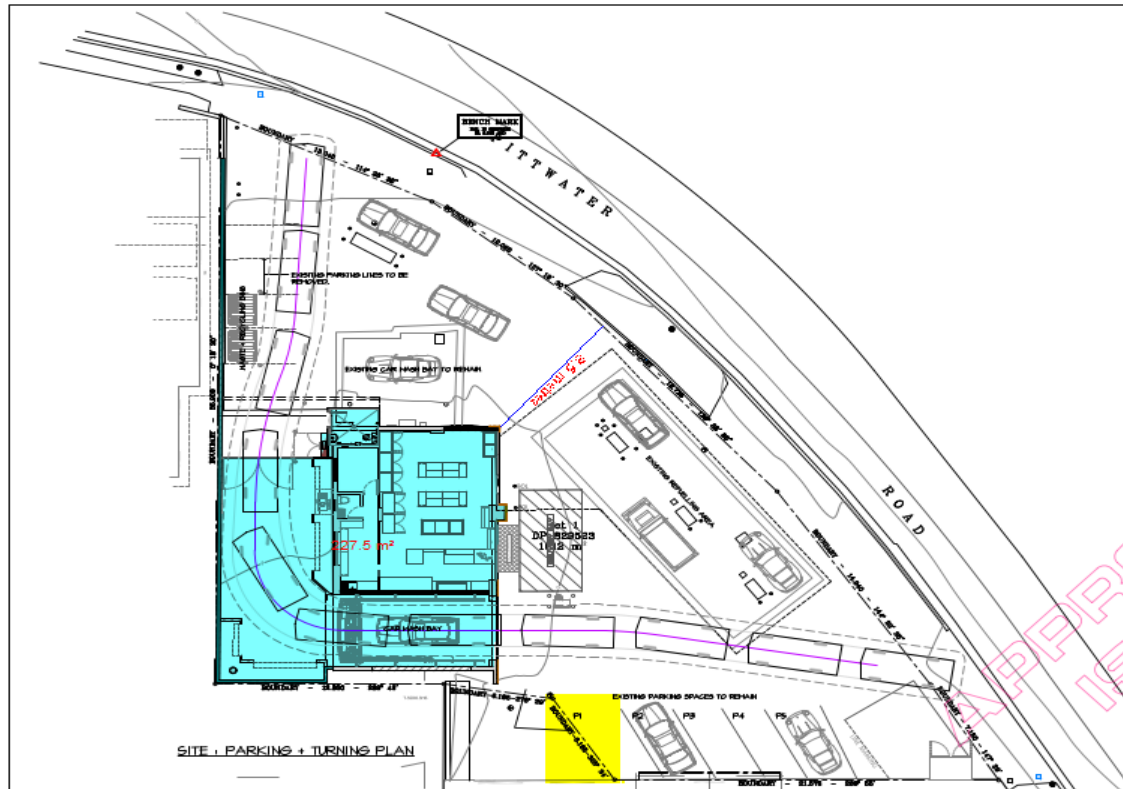


Figure 4 - Land Zoning under Manly Local Environmental Plan 2013 of 207-217 Pittwater Road
MANLY **Figure 5 - Yellow highlighted portion above shows this area does form any part of the proposed development**

The proposal is for the alterations and additions to the service station including an automatic car wash facility and a laundromat that is permitted with consent under MLEP 2013 in the E1 Local Centre zone however is not a suite of permissible development under the R1 General Residential zone of the MLEP 2013.

However, located within the R1 General Residential portion of the site is an existing parking space (P1) and there no proposed works within this area. As the existing parking space is unaltered under this application and all new works and the additional uses are located within the E1 zone, no further assessment is required in this instance.

5.10 Heritage conservation

The proposal seeks consent for alterations and additions to an existing service station including the internal reconfiguration and enlargement of the retail service area, the addition of an accessible toilet and upgrading of the signage and some additional peripheral promotional images. The upgrading of the retail services area involves changes to the building's street presentation, but mainly remains within the existing building footprint, therefore the proposed changes to the street façade are considered to have negligible impact upon the significance of the conservation area. However, the size of the proposed vinyl graphics on the sliding doors and full height windows are considered to not comply with the controls of Manly DCP 2013:

4.4.3.2 Signage on Heritage listed items and in Conservation Areas

i) Signs on shop windows should not exceed 25 percent of the window area;

Furthermore, the Heritage Impact Statement, submitted with this application states that: *"Should Council wish to put forward their preferred palette of colours, materials and finishes as an alternative to what has been proposed, the applicant would be amenable to taking on the advice of Council's heritage advisor in this regard."* However, the proposed colours and finishes are not specified in the documents.

Given the above the proposal is supported subject to recommended conditions, in the event that the development is approved.

Schedule 5 Environmental heritage

The subject property is located in C1 - Pittwater Road Conservation Area and within the vicinity of a heritage item, listed in Schedule 5 of Manly Local Environmental Plan 2013:

- Item I 212 - House - 226 Pittwater Road, Manly

Council's Heritage Officer has reviewed the proposal and considered it supportable subject to recommended conditions in the event of approval.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1012m ²	Requirement	Proposed	% Variation*	Complies
4.2.8.1 Height	8.5m	3.9m	-	Yes
4.2.8.2 Setbacks	Primary Frontage (North & East): Established Building Line Side Setback (South): 1/3 wall height - 1m Side Setback (West): 1/3 wall height - 1m	Primary Frontage: 8.5m Side Setback (South): Nil Side Setback (West): Nil	- 100% 100%	Yes No No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	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
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	No	Yes
4.2.8.3 Landscaping	No	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The proposed development fails to provide adequate solar access to No. 4 Golf Parade, Manly in accordance with this clause.

Note: No. 2 Golf Parade is in shadow by the existing service station during the winter solstice.

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposed development, given its proximity to the southern side boundary, building height, and the difference in levels between the subject site and No. 4 Golf Parade (approximately 0.5 meters lower), has resulted in the overshadowing of the private open space of No. 4 Golf Parade, during the winter solstice, as indicated by the solar access diagrams submitted by the applicant, the private open space at No. 4 Golf Parade will experience overshadowing from 9 am to 2 pm.

This overshadowing creates a significant impact by depriving No. 4 Golf Parade of adequate solar access to their private open space area, diminishing the enjoyment and use of their private open space. As a consequence, the proposed development fails to comply with this objective, which emphasises the importance of preserving solar access for neighboring properties during critical periods like the winter solstice.

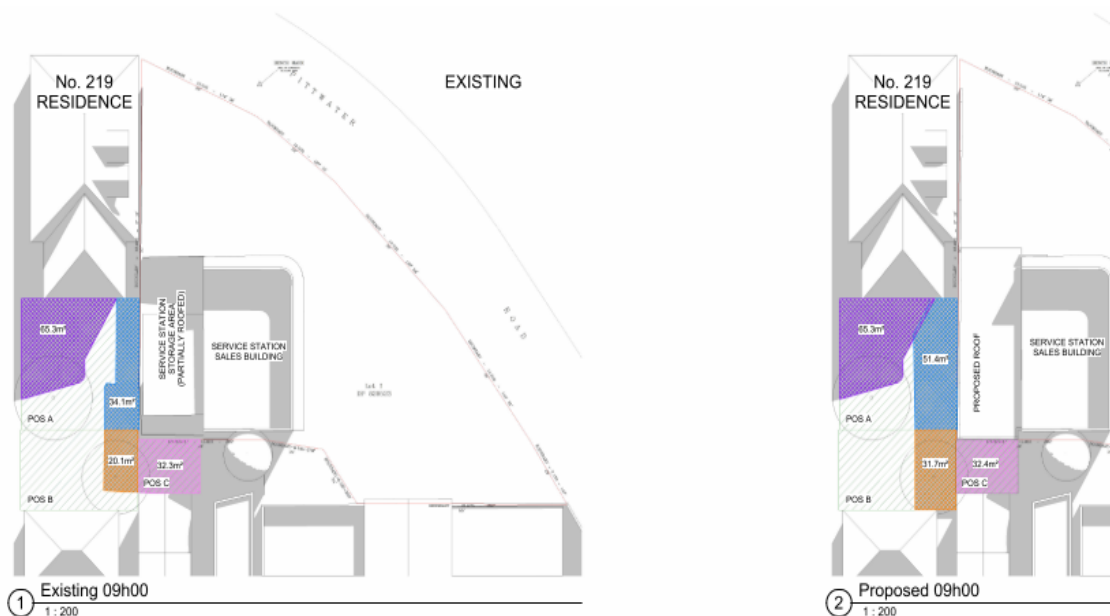


Figure 6 - Overshadowing of private open spaces at 9am (Existing versus Proposed)

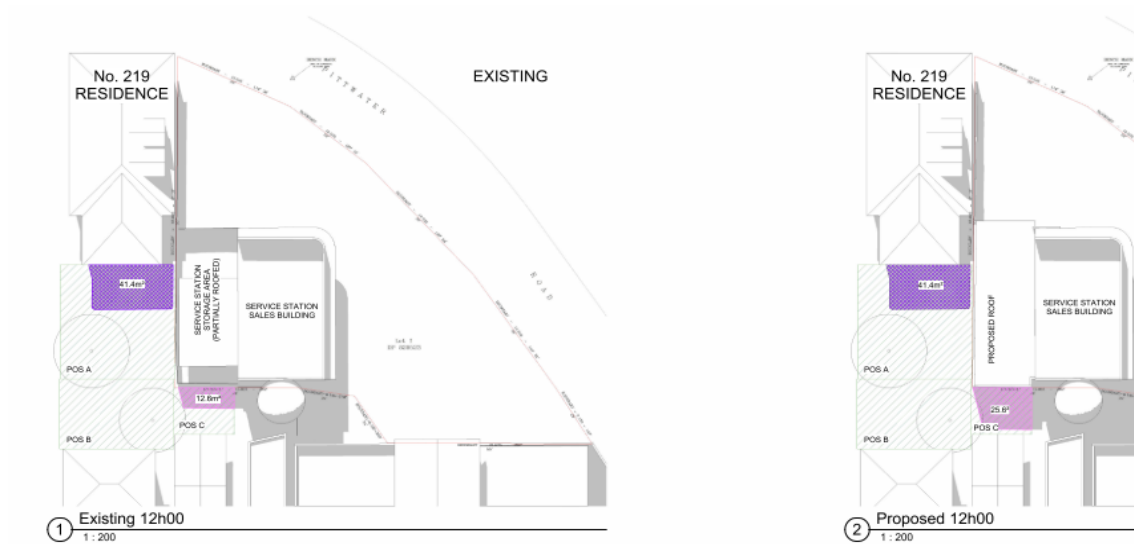
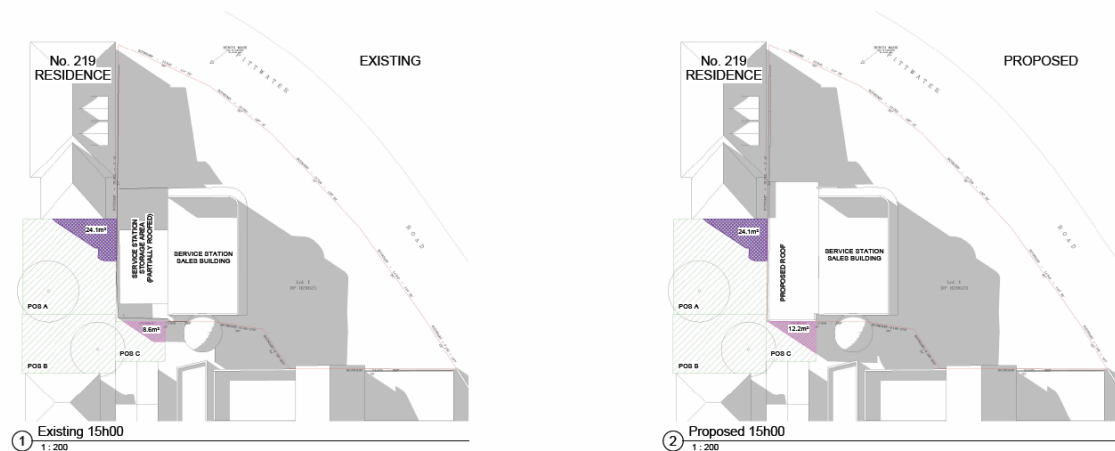


Figure 7 - Overshadowing of private open spaces at 12pm (Existing versus Proposed)



21/06/2024	Shadows Cast By	POS A (m²)	%	POS B (m²)	%	POS C (m²)	%
15h00		149	100	91	100	32.4	100
Existing	No. 219 Residence	24.1	16%				
	Existing Development	0	0%	0	0%	8.6	27%
Proposed	No. 219 Residence	24.1	16%				
	Proposed Development	0	0%	0	0%	12.2	38%
	Combined	24.1	16%				

Solar assessment on 4 Golf Parade Manly
 POS = 32.4sqm
 9am (32.4sqm in shadow) = 100%
 12pm (25.6sqm in shadow) = 79%
 1pm (21.1sqm in shadow) = 65.1%
 2pm (16.6sqm in shadow) = 51.2%
 3pm (12.2sqm in shadow) = 38%

Figure 8 - Overshadowing of private open spaces at 3pm (Existing versus Proposed) including solar assessment of No. 4 Golf Parade demonstrating that the proposal will solar the private open from 9am to 2pm during the winter solstice.

Objective 2) 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:

The overshadowing resulting from the proposed development creates a substantial impact by depriving No. 4 Golf Parade of adequate solar access, thereby diminishing the enjoyment and use of their private open space. Consequently, the proposed development fails to comply with this objective, which underscores the importance of preserving solar access for neighboring properties, especially

during critical periods such as the winter solstice. The emphasis on safeguarding solar access reflects a commitment to maintaining a reasonable quality of life and environmental conditions for neighboring residents.

Objective 3) 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 proposal effectively ensures adequate solar access to adjoining dwellings; however, as highlighted earlier, it falls short in providing sufficient solar access to the private open space of No. 4 Golf Parade. This deficiency will have a significant impact on the amenity and lifestyle for the residents of this property. Consequently, it results in non-compliance with the specified objective related to solar access. Despite meeting the requirements for some neighboring properties, the failure to extend this provision to No. 4 Golf Parade signifies a non-compliance with this objective, particularly in ensuring adequate solar access for all affected residences.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

3.4.2 Privacy and Security

Please refer to Internal Referrals of this assessment report under Environmental Health (Industrial). In short, a Noise Assessment Report completed by Acoustic Consultant was received by Council and reviewed by Council's Environmental Health Officer. Suitable conditions have been recommended including the recommendations of the Noise Assessment Report, which could be imposed on the development in the event that it is approved.

4.2.3 Setbacks Controls in LEP Zones B1 and B2

As the subject site is located within a Neighbourhood Centre, the specified setback provisions are detailed under Clause 4.2.8.2 of Manly Development Control Plan 2013 within this report.

4.2.8.2 Setbacks

Clause 4.2.8 Neighbourhood Centres

"New development should generally be at a scale which does not adversely affect the surrounding residential area. In certain centres however, the height and design of new buildings should match distinctive existing buildings, particularly at Pittwater Road (which includes LEP listed heritage items), Addison Road and Sydney Road.

Objective 2) To provide side and rear setbacks which ensure the building height and distance of the building from its boundaries at various storeys, maintain the amenity of neighbouring residential sites and contributes to the amenity of the building and surrounds through landscape design."

Clause 4.2.8.2 Setbacks

a) *"The setback from the front boundary must conform to the predominantly established building alignments in the Centre (LEP Zone B1). Buildings will be constructed with a nil setback to the side boundary except where:*

(i) it adjoins land zoned residential in the LEP (including E3 & E4), in which case consideration must be given to residential setback controls at paragraph 4.1.4 of this plan; or where

(ii) a nil setback would be undesirable in terms of the amenity of any residential uses existing on adjoining land or proposed for inclusion in the development in which case consideration must be given to provisions of this plan in relation to amenity at paragraph 3.4 Amenity of this plan."

Clause 4.1.4.2 Side setbacks and secondary street frontages

a) *Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.*

Comment: Council has identified as part of the assessment in relation to a side setback to the proposed carwash building due to the proximity to adjoining residential properties (zoned R1 General Residential). Amendments have been made to the development by relocating building walls away from the southern and western side boundaries, however the extent of setback needed to overcome overshadowing cannot be undertaken as this will directly impact the manoeuvring of motor vehicles through the designed carwash arrangement. Additionally, it is noted that the applicant has reduced the overall height of the carwash building down, however the lack of side setback creates unnecessary building bulk and creates a lack of space for adequate landscaping to soften the building. Furthermore, the proximity of this building in particular to No.4 Golf Parade, Manly (residential allotment to the south) will create overshadowing for a majority of the day (9am - 2pm during the winter solstice will be non compliant with solar access in accordance with Clause 3.4.1 Sunlight Access and Overshadowing of MDCP).

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is unsupported, in this particular circumstance.

4.2.8.3 Landscaping

"All side and rear setbacks to boundaries adjoining land zoned Residential in the LEP (excluding laneways) are to be developed for deep soil planting to allow for the retention/establishment of a mature tree landscape buffer."

Comment: The proposed carwash building demonstrates a nil setback to both the south and west side

boundaries which demonstrates a non-compliance to Clause 4.2.8.2 Setbacks and additionally does not allow to sufficient space to allow for deep soil planting for establishment for a landscape buffer to the adjoining residential properties/dwellings. This landscaping and setback would allow for adequate visual relief and soften the appearance of the carwash building to these adjoining residential properties/dwellings.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is unsupported, in this particular circumstance.

4.2.8.5 Carparking, Vehicular Access and Loading Controls

Please refer to the Internal Referrals (Traffic Engineer) for this assessment report. In short, a review by the Traffic Engineer has established that the proposed parking and traffic movements for the proposed redevelopment is considered to be compliant with Traffic Generating Development by TfNSW (subject to conditions).

4.2.8.6 Hours of Operation

There is no change to the approved operating hours (NSW Land and Environment Court Proceedings No. 11218 of 2005, DA 0433/2004) via for the service station and car wash facilities.

4.4.3 Signage

Description of non-compliance

The proposed development includes the installation signage above awning height which consists of four (4) signs along the front (northeast) façade of the building (being new adhesive signage). The proposed signs on the shop windows should not exceed 25 percent of the window area and has been deemed to be excessive by Council's Heritage Officer and will be suitable conditioned.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.

Comment:

The nature of the signage is consistent with the established business identification signage (subject condition(s)).

Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.

Comment:

The signage is scaled appropriately, is in proportion to the existing awning of the building and will not result in visual clutter. The signage is considered to be of a high quality design. As stated above the

signage of the windows will be conditioned to ensure the proposed development meets this objective.

Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.

Comment:

The proposed signage does not unreasonably interfere with the streetscape or amenity of residents. The proposed signage clearly identifies premises. The proposed development meets this objective.

Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.

Comment:

The proposed signage has been designed in such a way that positively contributes to the urban character and scenic amenity of the area (subject condition(s)).

Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.

Comment:

Council's Heritage Officer has reviewed the proposed development no objections, subject to conditions.

Objective 6) To ensure all signage is of high standards of graphic and textural content.

Comment:

The proposed signage is of a high quality design, is clear, and assists in identifying the use of the site.

Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.

Comment:

Not applicable. The subject site is zoned E1 Local Centre.

As stated above the proposed signage on the shop windows has been conditioned to ensure compliance with Clause 4.4.3.2 Signage on Heritage listed items and in Conservation Areas (Signs on shop windows should not exceed 25 percent of the window area). Overall, the proposed development meets the relevant underlying objectives, as detailed in the above merit assessment.

Furthermore, an assessment against State Environmental Planning Policy (Industry and Employment) 2021 in regards to signage, as outlined in the relevant section of this report, has concluded that the proposed signage aligns with the requirements of the SEPP. In this instance, the proposed signage can be supported on its merits (subject to conditions).

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$6,561 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$656,064.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, involving alterations and additions to the service station, including an automatic car wash facility, a laundromat and signage, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to ten unique submissions received as objections.

The issues related to side setbacks, amenity (overshadowing), and landscaping are non-compliant with the relevant clauses under the Manly Development Control Plan (MDCP) and are not supported.

The concerns raised in the objections are addressed in detail in the section of the report relating to

Notification & Submissions Received. As identified above, issues relating to the side setback and overshadowing raised in the submissions are concurred with and should be given determining weight. There are a number of other issues raised within the submissions that could be addressed via condition(s), and these have been suitably addressed.

The critical assessment issues included side setbacks, amenity (overshadowing), and landscaping. The assessment finds that the proposed development is excessive in bulk and scale for the site, resulting in impacts on the adjoining residential properties and unreasonable amenity.

The assessment report recommends that the Panel should REFUSE the development application for the reasons attached to the recommendation. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2023/0386 for the Alterations and additions to the service station including an automatic car wash facility, a laundromat and signage on land at Lot 1 DP 829523,207 - 217 Pittwater Road, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan.

Particulars:

The proposal fails to provide sufficient solar access to penetrate private open space on No. 4 Golf Parade. This loss of solar access is attributed to the deficient side setback on the southern side of the development site and has an unacceptable loss of amenity for the residents of 4 Golf Parade.

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.2.8.2 Setbacks of the Manly Development Control Plan.

Particulars:

i) The proposal has a non-compliant southern side setback, which is particularly evident along the southern and western sides adjacent to the carwash building. Compliant setbacks are vital for allowing for the integration of substantial landscaping, a key component in softening the overall appearance of the structure and transition of the landuse to the residential zone. Furthermore, non-compliance with solar access standards for No. 4 Golf Parade, as identified is attributed to the inadequate side setbacks.

ii) The current design, falls short in providing sufficient visual relief to the adjoining residential properties. Consequently, there is a clear imperative for further design consideration to rectify these concerns and ensure a more harmonious integration with the surrounding residential environment.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.2.8.3 Landscaping of the Manly Development Control Plan.

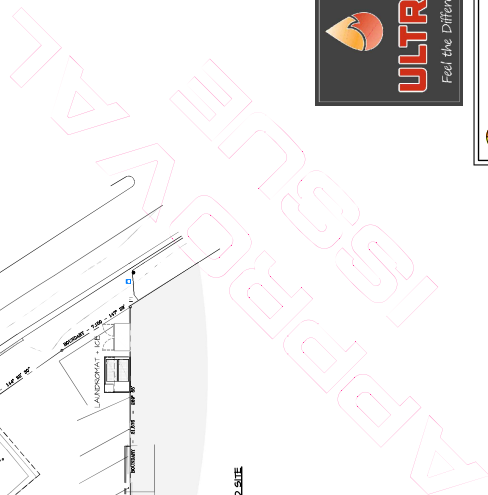
Particulars:

The proposal fails to provide adequate side setbacks, particularly along the southern and western sides adjacent to the carwash building. These setbacks are crucial for accommodating substantial landscaping, which plays a key role in softening the building's appearance and mitigating its visual dominance. Additionally, the proposal lacks sufficient measures to provide visual relief to neighboring residential properties, indicating a need for further consideration in the design to address these concerns.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Particulars:

The development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community.



DEMOLITION + SITE PREPARATION:

1. NOMINAL EXTENT OF DEMOLITION WORKS TO BE WALLS, SLABS, WINDOWS, EQUIPMENT BUT SHOW THIS
2. ALL DEMOLITION SHALL BE CARRIED OUT IN FULL ACCORDANCE WITH THE DEMOLITION ACT 1993, AS AMENDED, AND THE BUILDING CODE OF AUSTRALIA, SAFE WORK AUSTRALIA RELEVANT STANDARDS, AND THE RELEVANT AUSTRALIAN STANDARDS. DEMOLITION SHALL BE CARRIED OUT IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS, AND THE RELEVANT AUSTRALIAN STANDARDS. DEMOLITION SHALL BE CARRIED OUT IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS, AND THE RELEVANT AUSTRALIAN STANDARDS.
3. ALL WORK SHALL BE CARRIED OUT IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS, AND THE RELEVANT AUSTRALIAN STANDARDS. DEMOLITION SHALL BE CARRIED OUT IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS, AND THE RELEVANT AUSTRALIAN STANDARDS.
4. THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES, AND MANAGE THE WORKS AND DISPOSAL OF ALL DEMOLITION MATERIALS IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS, AND THE RELEVANT AUSTRALIAN STANDARDS.
5. PROVIDE ALL SET AND SEGMENT CONTROL MEASURES SHOWN ON THE CONSTRUCTION MANAGEMENT PLAN, AND AS REQUIRED BY THE RELEVANT AUTHORITIES.

THIS DRAWING IS TO BE PRINTED AND DISTRIBUTED IN COLOUR

REVISED ISSUE FOR DEVELOPMENT APPROVAL NOT FOR CONSTRUCTION

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ALTERATIONS TO SERVICE STATION FOR MANLY NSW 2045
ULTRA PETROLEUM GROUP Pty Ltd
Drawing No. 08-045-22
Scale 1:100 @ A1
Project No. 1:100 @ A1
Date 4th January 2023
Revised By
Designed By

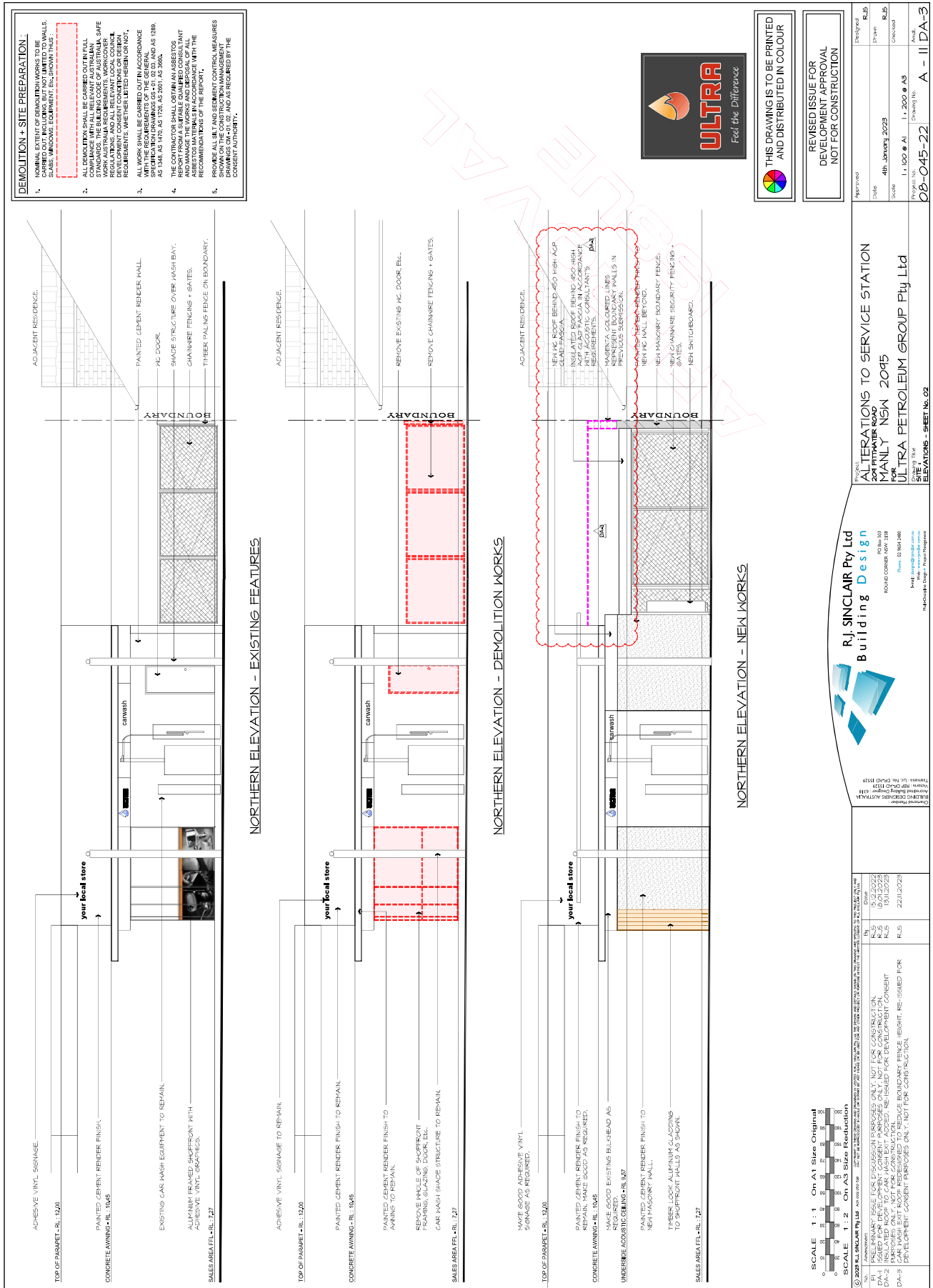
EASTERN ELEVATION - EXISTING FEATURES

EASTERN ELEVATION - DEMOLITION WORKS

EASTERN ELEVATION - NEW WORKS

SCALE 1:1 On A1 Size Original
SCALE 1:2 On A3 Size Reduction

ULTRA PETROLEUM GROUP Pty Ltd
150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/9



5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1 MOD2023/0539 - 96-97 NORTH STEYNE, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA272/2017 FOR ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL FLAT BUILDING

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approve** Modification Application No. Mod2023/0539 for Modification of Development Consent DA272/2017 for Alterations and additions to an existing Residential Flat Building on land at Lot 101 DP 1110110,96 - 97 North Steyne, MANLY subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Maxwell Dunca – Acting Manager
TRIM FILE REF	2024/077460
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0539
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 101 DP 1110110, 96 - 97 North Steyne MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA272/2017 for Alterations and additions to an existing Residential Flat Building
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
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:	Cecil George Koutsos
Application Lodged:	20/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	30/10/2023 to 13/11/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 64.6%
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks consent for modification of Development Consent DA272/2017, granted for alterations and additions to an existing residential flat building.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a further variation to the floor space ratio development standard of 64.6% (61.3% approved).

No submissions were received in relation to the application.

The critical assessment issue related to variation to the floor space ratio development standard. The Applicant notes a gross floor area of 3,234m², being an increase of 3m², equating to a floor space ratio of 2.423:1 (61.3% variation). The previous calculations under Mod2022/0628 excluded internal staircases for Units 15 to 19. However, these staircases are not 'common vertical circulation', as they service one unit each and should not have been excluded. Inclusion of these spaces in the calculation of gross floor area under this assessment accounts for the 64m² increase in gross floor area noted in this report. The actual increase in gross floor area from the approved development is agreed to be 3m².

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA272/2017, granted for alterations and additions to an existing residential flat building, as follows:

- Modification to the building entrance and foyer,
- Modification to the bin store doorway,
- Relocation of North Steyne gate for Unit 1, and
- Reconfiguration of unit layouts resulting in some increases and reductions in gross floor area (overall minor increase).

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 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 101 DP 1110110 , 96 - 97 North Steyne MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of North Steyne, Manly.</p> <p>The property is irregular in shape and has frontages of 29.46 metres to North Steyne, 45.77 metres to Pine Street and 30.475 metres to Pine Lane. The site has a surveyed area of 1,335m².</p> <p>The site is located within the R3 Medium Density Residential zone under the Manly Local Environmental Plan 2013 and accommodates a five-storey residential flat building with vehicular access provided via Pine Street to an existing basement car park. The site is relatively level and is located within the foreshore scenic protection area.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by shop top housing, residential flat buildings and dwelling houses. The adjacent property to the north at 98 North Steyne is developed with a five-storey residential flat building. The building is located in proximity of a number of items of local heritage significance, though is not listed as an item of heritage significance itself, nor located within a heritage conservation area. To the west of the site fronting Pine Lane and Pine Street is a two-storey residential apartment building. To the east is Manly Beach and North Steyne Surf Life Saving Club.</p>

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:

- DA357/2010 for strata subdivision of the existing residential flat building into twenty-two lots was approved by Council on 13 April 2011.
- DA272/2017 for alterations and additions to the existing residential flat building was approved by the Northern Beaches Local Planning Panel on 4 April 2018.
- Mod2021/0647 for modification of Development Consent DA272/2017 was approved by the Northern Beaches Local Planning Panel on 2 February 2022.
- Mod2022/0628 for modification of Development Consent DA272/2017 was approved by the Northern Beaches Local Planning Panel on 17 May 2023.

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 DA272/2017, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact, as the overall building remains generally as approved, with only minor reconfiguration proposed.
(b) 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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA272/2017, as the modifications are for minor reconfiguration only, and do not alter the approved use, the approved number of units, the approved building height, or the overall approved compliance with built form controls.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
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 application has been publicly exhibited from 30/10/2023 to 13/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions</p> <p>The application has been investigated with respects to aspects</p>

Internal Referral Body	Comments
	<p>relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Coast and Catchments)	<p>Supported without conditions</p> <p>The proposal seeks approval for modification of development consent DA 272/2017 granted for alterations and additions to an existing dwelling house and subsequent modifications under Mod2021/0647 and Mod 2022/0628.</p> <p>The proposed modifications predominately relate to the predominantly internal changes to the buildings and very minor, consequential modifications to small parts of the external appearance of the approved building.</p> <p>The subject property is located within the 'Coastal Environment Area' and the 'Coastal Use Area' maps of the Coastal Zone and also in the Foreshore Scenic Protection area.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> Supplied plans and reports, including; <ul style="list-style-type: none"> Statement of Modifications prepared by JV Urban Pty. Ltd. dated September 2023 Coastal Management Act 2016 State Environmental Planning Policy (Resilience & Hazards) 2021 Relevant LEP and DCP Clauses <p>The objectives and requirement of the CMA 2016, SEPP -R & H 2021 and relevant LEP and DCP Clauses have been met.</p> <p>The proposed modifications appear consistent with the design intent of the original proposal.</p> <p>No conditions in additions to those for the original development application are considered necessary.</p>
NECC (Development Engineering)	<p>Supported without conditions</p> <p>The proposed modifications do not alter the original assessment of the application by Development Engineering.</p> <p>Development Engineering support the proposal with no additional or modified conditions of consent recommended.</p>
NECC (Flooding)	<p>Supported without conditions</p>

Internal Referral Body	Comments		
	<p>The proposal is for minor modifications to the existing development application. Specifically, alterations to the entrance, foyer, apartment layouts and a singular apartment entrance gate.</p> <p>The proposed modifications are not expected to affect the flood compatibility of the development with councils DCP and LEP. There are no flood related objections to the proposal subject to the retention of the conditions of consent from DA272/2017 (as modified under MOD2021/067, MOD2022/0628).</p>		
Strategic and Place Planning (Heritage Officer)	Supported without conditions		
	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>The proposal has been referred to Heritage as the subject site adjoins a heritage item and is within the vicinity of a number of heritage items:</p> <p>Item I2 - All stone kerbs - Manly municipal area Item I194 - House - 7 Pine Street, Manly Item I174 – Beach Reserve—Merrett Park North Steyne and South Steyne Item I173 – North Steyne Surf Club - North Steyne</p>		
	Details of heritage items affected		
	<p>Item I2 - All stone kerbs <u>Statement of Significance</u> Stone kerbs are heritage listed.</p> <p>Item I194 - House <u>Statement of Significance</u> Fine intact example of Federation Queen Anne style.</p> <p>Item I174 – Beach Reserve <u>Statement of significance</u> High significance as natural sand beach and cultural backdrop of paved promenade and first coastal plantings of Norfolk Island Pines.</p> <p>Item I173 – North Steyne Surf Club <u>Statement of significance</u> The North Steyne Surf Life Saving Club (NSSLSC) and building is historically significant for its continuous association with surf life saving and use as a surf life saving club in the same location for nearly 100 years.</p>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	

Internal Referral Body	Comments		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance		
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for modifications to an existing residential flat building. This includes internal layout adjustments, as well adjustments to the entrance and unit floor space at upper levels and adjusting the North Steyne gate for Unit 1. The consent has been modified previously, most recently through Mod2022/0628 to which heritage raised no objections. The changes proposed are considered to not impact upon the heritage items or their significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

The original development application was assessed under the provisions of *State Environmental*

Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) and the Apartment Design Guide.

The proposed modifications are minor and do not alter the development's compliance with the requirements of SEPP 65 and ADH. The development remains consistent with the design principles of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 880579M_06 dated 28 September 2023). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	35	35

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 proposal did not require referral to Ausgrid.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 1 Coastal Wetlands and littoral rainforest area

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock*
 - ii) *platform for members of the public, including persons with a disability,*
 - iii) *overshadowing, wind funnelling and the loss of views from public places to*
 - iv) *foreshores,*
 - v) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and
 - b) *is satisfied that:*
 - i) *the development is designed, sited and will be managed to avoid an*
 - ii) *adverse impact referred to in paragraph (a), or*
 - iii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed modifications are minor in nature and are not anticipated to result in any increase in adverse impact in relation to the matters above. As such, the modified development has been designed, sited and will be managed to avoid adverse impact. The bulk and scale of the modified development has been considered in this assessment and is found to be equivalent to the approved development.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed modifications are minor in nature, relating to apartment reconfiguration, and are not likely to cause increased risk of coastal hazard on the subject site or surrounding land.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	13m	16.45m	Unchanged	-	As approved
Floor Space Ratio	1.5:1 (2,002m ²)	2.42:1 (3,231m ²)	2.46:1* (3,295m ²)	64.6%	No

* The Applicant notes a gross floor area of 3,234m², being an increase of 3m², equating to a floor space ratio of 2.423:1. The previous calculations under Mod2022/0628 excluded internal staircases for Units 15 to 19. However, these staircases are not 'common vertical circulation', as they service one unit each and should not have been excluded. Inclusion of these spaces in the calculation of gross floor area under this assessment accounts for the 64m² increase in gross floor area noted in this report. The actual increase in gross floor area from the approved development is agreed to be 3m².

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Whilst the modification will result in a floor space ratio that contravenes the maximum permitted by Clause 4.4 of the MLEP, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment*

Act 1979 (EPA Act), which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the Environmental Planning and Assessment Regulation 2021 or Clause 4.6 is required. The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

Development standard:	Floor space ratio
Requirement:	1.5:1 (2,002m ²)
Approved:	2.42:1 (3,231m ²)
Proposed:	2.46:1 (3,295m ²)
Percentage variation to requirement:	64.6%

The Applicant notes a gross floor area of 3,234m², being an increase of 3m², equating to a floor space ratio of 2.423:1. The previous calculations under Mod2022/0628 excluded internal staircases for Units 15 to 19. However, these staircases are not 'common vertical circulation', as they service one unit each and should not have been excluded. Inclusion of these spaces in the calculation of gross floor area under this assessment accounts for the 64m² increase in gross floor area noted in this report. The actual increase in gross floor area from the approved development is agreed to be 3m².

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 Floor Space Ratio has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) Assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

As above, no written request is required for this application.

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:

Clause 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of the Development Standard:

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The proposed modifications result in a nominal increase to the approved gross floor area due to internal reconfiguration, and therefore the floor space ratio. The increase does not alter the overall built form, so does not result in alteration of the approved bulk and scale.

(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 proposed modifications do not alter the approved density, retaining 20 units within the building. As above, the overall approved bulk remains unchanged.

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

Comment:

The proposed modifications do not alter the 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,

Comment:

The proposed modifications do not result in any increase in impact to adjoining land or the public domain.

(e) to provide for the viability of Zone E1 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. The subject site is zoned R3 Medium Density Residential.

Objectives of the Zone:

The objectives of the R3 Medium Density Residential zone are addressed as follows:

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

Comment:

The proposed modifications retain the total number of residential units (20) in the development, in order to support the housing needs of the community.

To provide a variety of housing types within a medium density residential environment.

Comment:

The proposed modification retains the approved variety of housing types in the locality.

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

Comment:

Not applicable. The proposed development retains the approved use of the site for a residential flat building.

To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.

Comment:

The proposed modification of the approved development supports revitalisation of the existing residential flat building.

To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.

Comment:

Not applicable. The proposed development retains the approved use of the site for a residential flat building.

Exception to Development Standards Conclusion:

No written request to vary the development standard is required. notwithstanding this, the proposal is considered to be acceptable having regard to the circumstances of the development and it is therefore considered appropriate that in this instance, flexibility in the application of the floor space ratio development standard be applied. In this context, the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under Section 4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the floor space ratio development standard is assumed by the Local Planning Panel.

6.1 Acid sulfate soils

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map. The works do not require excavation and are of low risk with reference to acid sulfate soils.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment:

The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

6.4 Stormwater management

No change is proposed to the approved stormwater management measures under this application.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The subject site is supplied with the above services. The approved and modified developments retain and rely upon these existing services.

Mainly Development Control Plan

Built Form Controls

The proposed modifications do not alter the approved compliance with the applicable built form controls under Part 4 of the Manly DCP.

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
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.5.3 Ventilation	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)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.5 Road Widening and Realignment	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

The proposed modifications alter the approved floor space ratio variation. This is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP.

4.1.10 Fencing

The proposed new gate for Unit 1 fronting North Steyne is 1.5 metres in height, but is approximately 50% transparent, being compliant with the requirements of this control.

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 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for modification of Development Consent DA272/2017, granted for alterations and additions to an existing residential flat building has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a further variation to the floor space ratio development standard of 64.6% (61.3% approved).

No submissions were received in relation to the application.

The critical assessment issue related to variation to the floor space ratio development standard. The Applicant notes a gross floor area of 3,234m², being an increase of 3m², equating to a floor space ratio of 2.423:1 (61.3% variation). The previous calculations under Mod2022/0628 excluded internal staircases for Units 15 to 19. However, these staircases are not 'common vertical circulation', as they service one unit each and should not have been excluded. Inclusion of these spaces in the calculation of gross floor area under this assessment accounts for the 64m² increase in gross floor area noted in this report. The actual increase in gross floor area from the approved development is agreed to be 3m².

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

REASON FOR DETERMINATION

The proposed additional floor space is nominal in nature and results in an increased variation of only 2.3%. The approved bulk and scale of the development remains unchanged by the proposed modifications. The proposal satisfies the objectives of the floor space ratio development standard and the R3 Medium Density Residential zone.

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. Mod2023/0539 for Modification of Development Consent DA272/2017 for Alterations and additions to an existing Residential Flat Building on land at Lot 101 DP 1110110,96 - 97 North Steyne, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-376011 Mod2023/0539	The date of this notice of determination	Modification for minor reconfiguration. Additional Conditions <ul style="list-style-type: none"> Condition 1C Modification of Consent - Approved Plans and Supporting Documentation Condition 11D Building Code of Australia Fire Safety Requirements Condition 11E Access and Facilities for Persons with Disabilities
PAN-280877 Mod2022/0628	17 May 2023	Various modifications to the built form and configuration of units. Additional Conditions: <ul style="list-style-type: none"> Condition 1B Modification of Consent - Approved Plans and Supporting Documentation Condition 11C Installation and Maintenance of Sediment and Erosion Control Condition 19C Protection of Stone Kerb in North Steyne
PAN-133605 Mod2021/0647	2 February 2022	Various modifications to the built form and configuration of units. Additional Conditions: <ul style="list-style-type: none"> Condition 1A Modification of Consent - Approved Plans and Supporting Documentation Condition 7A Amendments to the Approved Plans Condition 7B Noise - Design of Mechanical Plant Condition 7C Structural Certification

		<ul style="list-style-type: none"> Condition 11A Project Arborist Condition 11B Project Arborist Condition 19A Acoustic Certification Condition 19B Landscape Completion Condition 20A Swimming Pool/Spa Motor Noise <p>Deleted Conditions:</p> <ul style="list-style-type: none"> Condition ANS04A
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Modified conditions

A. Add Condition No. 1A - Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA1003	F	Demolition / Proposed Ground Floor Plan	Squillace Architects	6 September 2023
DA1004	F	Demolition / Proposed Levels 1 & 2 Floor Plan	Squillace Architects	6 September 2023
DA1005	F	Demolition / Proposed Level 3 Floor Plan	Squillace Architects	6 September 2023
DA1006	F	Demolition / Proposed Level 4 Floor Plan	Squillace Architects	6 September 2023
DA1007	D	Demolition / Proposed Roof Plan	Squillace Architects	6 September 2023
DA2000	E	Proposed West & North Elevations	Squillace Architects	6 September 2023
DA2001	E	Proposed East & South Elevations	Squillace Architects	6 September 2023
DA0010	F	Site Plan	Squillace Architects	6 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate 880579M_09	-	Ecoplus Consultants	28 September 2023
DA Capability Statement (Access)	AN023-016304	Philip Chun Building Compliance	18 October

Building Code of Australia 2022 Assessment Report	23-220953_BCA Report R04_230920	Philip Chun Building Compliance	2023 20 September 2023
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition 11D Building Code of Australia Fire Safety Requirements to read as follows:

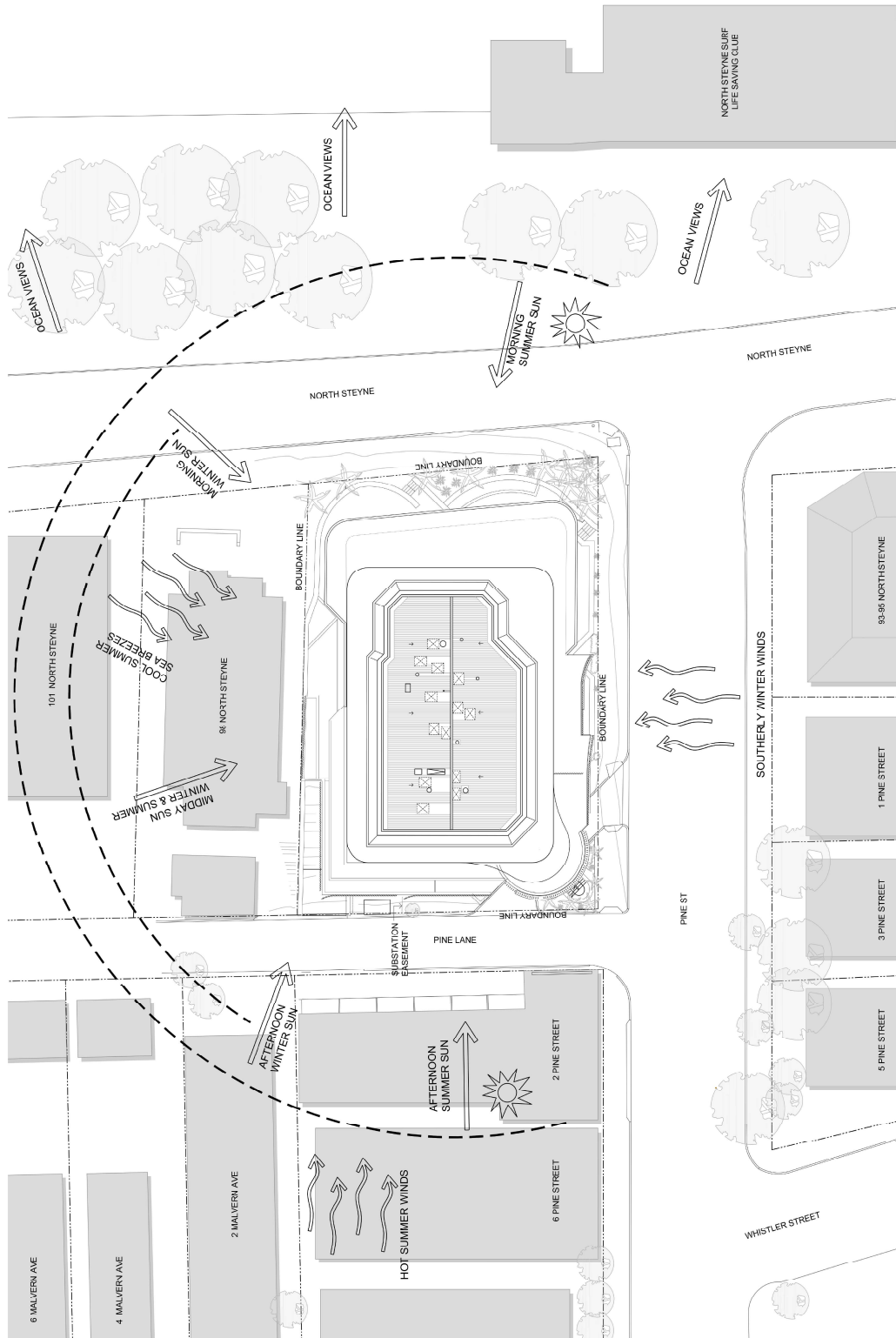
The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA 2022 Assessment Report prepared by Philip Chun, dated 20/9/2023, Ref No.23-220953_BCA Report R04_230920, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

C. Add Condition 11E Access and Facilities for Persons with Disabilities to read as follows:

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the Access Report prepared by Philip Chun dated 18/10/2023, Ref AN023-016304 is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifier prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.



1 SITE PLAN & ANALYSIS
Scale - 1:200 @ A1

<p>SECTION 96</p> <p>STATUS</p> <p>© This work is copyright. Apart from any use permitted by law, no part may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the copyright owner.</p> <p>Member of the Institute of Architects of Australia</p>	<p>DATE</p> <p>21.11.17</p>	<p>PURPOSE OF ISSUE</p> <p>DEVELOPMENT APPLICATION</p> <p>SECTION 4.55</p> <p>SECTION 4.55 WITH GFA CALCULATIONS</p> <p>SECTION 4.55 WITH GFA CALCULATIONS</p> <p>SECTION 4.55 WITH GFA CALCULATIONS</p> <p>SECTION 4.55 WITH GFA CALCULATIONS</p> <p>SECTION 4.55 WITH GFA CALCULATIONS</p>	<p>NOTES</p> <p>REV</p> <p>ENTRANCE AND Foyer REDESIGN</p> <p>EXTERNAL WALL OF UNIT 5 STRAIGHTEN</p> <p>EXTERNAL WALL OF UNIT 5 STRAIGHTEN</p> <p>EXTENSION OF UNIT 17 & 19 BEDROOM</p>	<p>SCALE</p> <p>1:200 @ A1</p>	<p>CHECKED BY</p> <p>VS</p>	<p>DRAWN BY</p> <p>SCA</p>	<p>DRAWING NO.</p> <p>DA0010</p>	<p>ISSUE</p> <p>E</p>	<p>PROJECT</p> <p>BELLA VISTA APARTMENT'S</p> <p>96 North Steyne</p> <p>Manly</p>

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STATUS
SECTION 96

Do not scale drawings. Verify all dimensions on site. Report any discrepancies to the architect immediately. This drawing is for information only and is not to be used for construction.

PROJECT
Bella Vista Apartments
96 North Steyne
Marilyn

CLIENT
CECIL KOUTSCS

ARCHITECTS
INTERIOR DESIGNERS
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ISS **DATE** **PURPOSE OF ISSUE**

A	21.11.17	DEVELOPMENT APPLICATION
B	11.08.21	SECTION 94.55
C	12.07.22	SECTION 94.55 WITH GFA CALCS & AMENDED SPA LOCATIONS
D	03.11.22	SECTION 94.55
E	06.09.23	SECTION 94.55

NOTES

- REV: ENTRANCE AND FOYER REDESIGN
- EXTERNAL WALL OF UNIT 3 STRENGTHEN
- EXTENSION OF UNIT 17 & 19 BEDROOM

AS 1:5 A1:5 1:50 @ A1 1:50 @ A1

DRAWING NO.
DA2000

ISSUE
E

SCALE
VS

CHECKED BY
SKA

DRAWN BY
SKA

DATE
21.11.17

PROPOSED
WEST 9 NORTH ELEVATIONS

PROJECT TITLE
WEST 9 NORTH ELEVATIONS

STONE
STONE: 100% natural stone, 100% natural stone, 100% natural stone
Ph: +61 2 8584 1201 Fax: +61 2 8584 1202
ARN: 24 125 554 53

MILBOURNE
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SECTION 96

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NOTES

REV: A1
- ENTRANCE AND FOYER REDESIGN
- RELOCATION OF UNIT FRONT GATE
- EXTENSION OF UNIT 17 & 18 BEDROOM

ISSUE DATE PURPOSE OF ISSUE

A	21.11.17	DEVELOPMENT APPLICATION
B	11.08.21	SECTION 4.55
C	12.07.22	SECTION 4.55 WITH GFA CALCULATIONS
D	03.11.22	SECTION 4.55
E	06.09.23	SECTION 4.55

PROJECT
BELLA VISTA APARTMENTS
96 North Sydney
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DRAWING NO.
DA2001

ISSUE
E

SCALE
1:100@A1

DATE
21.11.17

CHECKED BY
SOA

DRAWN BY
VS

DRAWING TITLE
PROPOSED
EAST & SOUTH ELEVATIONS

ITEM 5.2	MOD2023/0611 - 1 GRIFFITHS STREET, FAIRLIGHT - MODIFICATION OF DEVELOPMENT CONSENT DA2023/0192 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL.
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PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a development involving the demolition of a heritage item.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Modification Application No. Mod2023/0611 for Modification of Development Consent DA2023/0192 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 978699,1 Griffiths Street, FAIRLIGHT, Lot 13 DP 978699,1 Griffiths Street, FAIRLIGHT subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Daniel Milliken
TRIM FILE REF	2024/094112
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0611
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 12 DP 978699, 1 Griffiths Street FAIRLIGHT NSW 2094 Lot 13 DP 978699, 1 Griffiths Street FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2023/0192 granted for Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Max Frederik Weaver Rachael Weaver
Applicant:	The Trustee For AMS Trust

Application Lodged:	28/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	06/12/2023 to 11/01/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal seeks consent for modification of consent DA2023/1092 for alterations and additions to the existing dwelling house at 1 Griffiths Street, Fairlight

The subject site forms part of Heritage Item No. 155 'Group of 4 houses' located between Nos. 1, 3, 5 and 11 Griffiths Street. The modifications proposed include minor additional demolition works. Given the heritage listing of the dwelling, the works are 'sensitive development'. The application is therefore required to be determined by the Northern Beaches Local Planning Panel (NBLPP).

The proposed development complies with the Height of Buildings and Floor Space Ratio development standards of Manly Local Environmental Plan (MLEP) 2013.

No submissions were received as part of the public exhibition of the application.

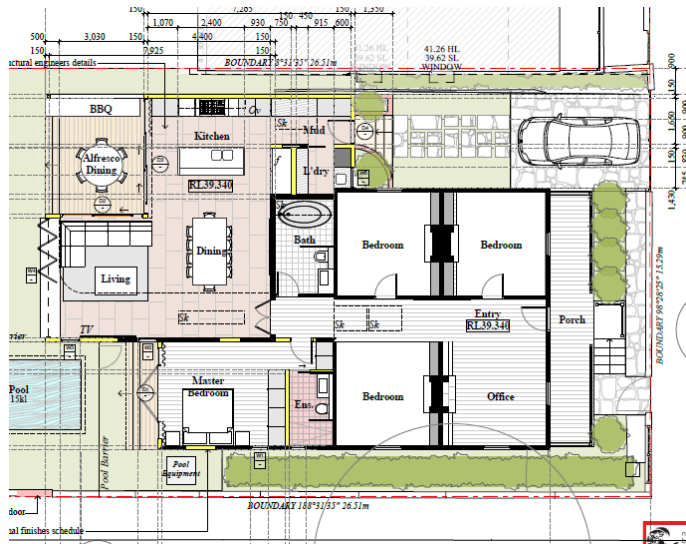
The proposed modifications are deemed appropriate for the site and it is recommended that the NBLPP, as the consent authority, grants approval to the development application.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* seeks to modify the built form approved under Development Consent DA2023/0192.

The modifications proposed include:

- Modification of the layout of the kitchen and dining spaces with the inclusion of a bar.
- Modification of the bathroom, laundry and entry to reduce size.
- Demolition of existing bathroom wall.
- Exclusion of the mudroom.
- Modification to entry stairs.
- Stormwater management alterations. The amendment to the stormwater management plan will require the amendment of Condition 7 and Condition 14. These changes are detailed in the conditions below.



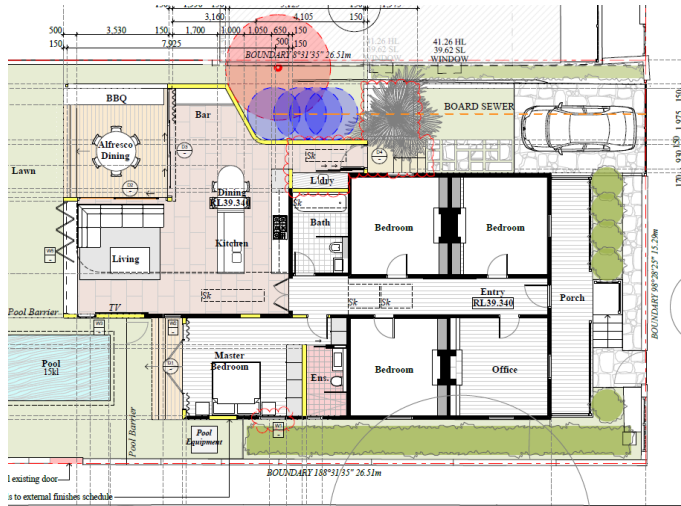


Image 1 - Approved building footprint (DA2023/0192 building footprint)

Image 2 - Proposed modified building footprint

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

Assessment - SEPP (Sustainable Buildings) 2022

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

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:	<p>Lot 12 DP 978699 , 1 Griffiths Street FAIRLIGHT NSW 2094</p> <p>Lot 13 DP 978699 , 1 Griffiths Street FAIRLIGHT NSW 2094</p>
Detailed Site Description:	<p>The subject site consists of two (2) allotment located on a corner allotment, with a primary frontage to Griffiths Street, secondary frontage to William Street and Union Lane.</p> <p>The lots have been amalgamated. The sites are regular in shape with a northern frontage of 15.29m along Griffiths Street. The eastern secondary frontage along William Street measures 26.16m and the southern secondary frontage along Union Lane also measures 15.29m. The western side boundary measures 26.51m. The sites have a surveyed area of 405.3m².</p> <p>The site is located within the R1 General Residential zone and accommodates a single storey clad building with a metal roof. Vehicular access is available to the site via a paved driveway to a concrete hardstand parking area.</p> <p>The site slopes from the south eastern boundary to north towards the Griffiths Street primary frontage. The subject site has a moderate fall from the rear yard (RL40.00) to the front boundary (RL38.00) at Griffiths Street, a fall of approximately 2m.</p> <p>The site features landscaping with hedges, small trees and ground covers located within the front, rear and eastern side setbacks.</p> <p>The subject site is identified as heritage item I55, being referred to as "Group of 4 houses" – 1, 3, 5 and 11 Griffiths Street House. The existing dwelling is defined by federation style sandstone and cladding architecture with a pitched corrugated steel roof form.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses with a variety of architectural styles and built form.</p>

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:

- **DA2023/0192** - Alterations and additions to a dwelling house including a swimming pool. (Approved by NBLPP 21 June 2023)
- Development Application DA337/10 for alterations and additions to an existing dwelling including internal alterations, extensions, replacement of roof and external alterations was approved by Manly Council under delegation on the 9 August 2011.
- A Construction Certificate (CC11/171) was issued by the PCA on 31 January 2012 for all works included on the DA description.
- A final occupation (should have been an Interim occupation certificate) was issued by the PCA for the completed works involving "Alterations and additions to an existing dwelling including internal alterations". The remainder of the works involving "extensions, replacement of roof and external additions" were not included in the OC.

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 DA2023/0192, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2023/0192 for the following reasons:</p> <ul style="list-style-type: none"> • The use remains for single residential use. • The density does not change • The dwelling house is visually consistent with what was originally approved.
(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 DA2023/0192 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(i) the regulations, if the regulations so require,	

Section 4.55 (2) - Other Modifications	Comments
or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 'Matters for Consideration'	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter was previously dealt with via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter was previously dealt with via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter was previously dealt with via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in 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 application has been publicly exhibited from 06/12/2023 to 11/01/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification indicates that no additional significant landscape elements are impacted than was approved previously.</p> <p>No objections are raised with regard to landscape issues, however it is recommended that a condition be included requiring the planting of a tree as indicated on the landscape plan and to comply with Manly DCP requirements.</p> <p>The following condition is recommended:</p> <p>Required Tree Planting</p> <p>Trees shall be planted in accordance with the following:</p> <p>a) 1 x native tree shall be planted within the property to achieve at least 4 metres height at maturity, and in accordance with the following:</p> <p>i) tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward or may be <i>Tristaniosis laurina</i> 'Luscious' as indicated on the landscape plan; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,</p> <p>ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,</p> <p>b) Details demonstrating compliance are to be submitted to the</p>

Internal Referral Body	Comments
	<p>Principal Certifier prior to the issue of any Occupation Certificate.</p> <p>Reason: To maintain environmental amenity.</p>
NECC (Development Engineering)	<p>The proposed modifications are supported. The submitted stormwater management plan is acceptable.</p> <p>Development Engineering support the proposal, subject to the modification of conditions 7 and 14 as follows:</p> <p>Amend Condition - 7 - On-Site Stormwater Detention Details:</p> <p>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 Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Aiden Hogan, drawing number 022021 C01 Rev E and C02 Rev C, dated 25/10/23 and 24/10/23 respectively. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.</p> <p>The drainage plans must address the following:</p> <ol style="list-style-type: none"> 1. A section through the on-site detention tank and control pit to ensure the top of the tank is below the overflow pipe. 2. Details of the detention tank including invert and top water levels. 3. Invert level and pipe size of the emergency overflow pipe. <p>Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.</p> <p>Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.</p> <p>Amend Condition 14 - Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures</p> <p>The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.</p> <p>The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The</p>

Internal Referral Body	Comments		
	<p>terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment 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 as to user is to be submitted.</p> <p>Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.</p> <p>Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.</p>		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>This application has been referred to Heritage as the subject site contains a heritage item, being part of Item I55 - Group of 4 houses at 1, 3, 5 and 11 Griffiths Street, listed in Schedule 5 of Manly LEP 2013.</p>		
	Details of heritage items affected		
	<p>Details of the heritage item as contained within the Manly Heritage inventory are:</p> <p>Item I55 - Group of 4 houses</p> <p><u>Statement of significance</u></p> <p>A group of modest weatherboard cottages illustrative of early development of Fairlight.</p> <p><u>Physical description</u></p> <p>Group of timber cottages (one brick infill) with iron roofs c.1910-1920. Very small scale development; extremely narrow allotments. Significant stone wall from William Street to end of No.5. Development pattern similar to rear of block (Charles Street).</p>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	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	

Internal Referral Body	Comments		
	Other	No	
	Consideration of Application		
	The proposal seeks consent for modifications to the approved DA2023/0192, including an increased setback to a portion of the western side boundary, changes to the internal layout of the approved extension and the external colour schedule. This increased side setback and the proposed materials and finishes are supported by Heritage.		
	It is noted that the height of the lower level roof (North Elevation) is proposed to be increased from the approved RL42.350 to RL 42.454, which is not supported as it will interfere with the eaves / exposed rafters of the existing building at this section. It is also noted that the Office and Bedroom wall (Ground Floor Plan - S4.55_3.00) is not showing on the floor plan, which must be corrected before approval to avoid any misunderstanding.		
	Revised comments - 11 December 2023		
	Amended drawings, dated 04 December 2023, resolved the issues that Heritage had with the proposal. Given the proposed modifications provide an improvement from the approved DA2023/0192, the proposal is considered to not have additional impact upon the significance of the heritage item.		
	Therefore, no objections are raised on heritage grounds and no conditions required.		
	<u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes		

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many

provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	3.7m (new works)	4m	Yes
Floor Space Ratio	FSR: 0.6:1 (243.18m ²)	FSR: 0.42:1 (170.4m ²)	FSR: 0.39:1 (157.41m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	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
6.12 Essential services	Yes

Detailed Assessment

5.10 Heritage conservation

The subject site is identified as heritage item I55, being referred to as “Group of 4 houses” – 1, 3, 5 and 11 Griffiths Street House. The existing dwelling is defined by federation style sandstone and cladding architecture with a pitched corrugated steel roof form.

The objectives of this clause are as follows:

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

Comment: The proposed modifications do not give rise to any visual impacts that would compromise the heritage significance of the subject site and surrounding heritage items. The application was referred to Council's Heritage advisor who raised no concerns with the proposed works.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development modification does not proposed to lower the watertable. No further assessment is required.

6.4 Stormwater management

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

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment: On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 405.4sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	E: 6.9m (based on gradient 1:15)	3.2m	No change	N/A
	W: 7m (based on gradient 1:12)	3.6m	3.5m	Yes
	S: 6.5m (based on gradient 0)	2.6m	No change	N/A
4.1.2.2 Number of Storeys	2	1	1	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.4m	0.4m	Yes

	Pitch: maximum 35 degrees	0 degrees	0 degrees	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	no changes, consistent with prevailing setback	No change	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1m W: 1.2m (based on wall height)	1.6m 0.9m	No change Western wall alterations - 3m	N/A Yes
	Windows: 3m	0.9m (minimum)	1.6m (eastern wall window alteration)	No
	Secondary street frontage: Prevailing setback / 1m	E: 1.6m, consistent with prevailing setback	No change	N/A
4.1.4.4 Rear Setbacks	8m	4.3m	No change	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	34.5% (145sqm)	40% (162sqm)	No
4.1.5.2 Landscaped Area	Landscaped area 35% of total open space	88% (129sqm)	90% (146sqm)	Yes
	1 native trees	0 trees	0 trees	N/A
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	>18sqm	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.4m	No change	N/A
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0m	No change	N/A
	1m curtilage/1.5m water side/rear setback	S: 1.8m W: 2.4m	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.6 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	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

Description of non-compliance

Clause 4.1.4.2 requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposed window altered along the eastern setback 1.6m from the side property boundary, will be non-compliant with the numerical control.

Merit consideration:

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

Objective 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.

Comment:

The proposed window alterations will not have an unreasonable impact upon the streetscape.

Objective 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.*

Comment:

Amenity considerations including privacy and solar access are all maintained to adjoining properties and the public domain.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

Notwithstanding the numerical non-compliances to the window side setback requirements, adequate spatial separation on either side of the proposed dwelling at each level ensures that there is flexibility in the siting of the building.

Objective 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.*

Comment:

The proposed modification increase landscaped open space across the site.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site is not located within a bushfire prone zone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

This control requires development to provide at least 55% (222.97sqm) of the site area as total open space. The modification provides 40% (162sqm) total open space and does not comply with the control.

It is noted the previous application provided 34.5% (145sqm) total open space, which was supported. As the modification reduces the non-compliance with the control, the proposal is considered acceptable.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal does not remove significant canopy trees and there are not significant site features impacted that provide for native flora or fauna.

Objective 2) 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 works proposes a suitable level of landscaped open space.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The established streetscape character is not likely to be impacted by the proposed works. No unreasonable amenity impacts will result of the proposed modifications.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff, subject to conditions.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal is not likely to lead to a significant spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

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.

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 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP

- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for modification of consent DA2023/1092 for alterations and additions to the existing dwelling house has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to works including partial demolition of a heritage item (Bathroom wall demolition).

When assessed against the MLEP 2013 and MDCP 2013, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The new works are sympathetic of the heritage character of the site and will maintain an appropriate visual relationship with the surrounding environment.

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. Mod2023/0611 for Modification of Development Consent DA2023/0192 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 978699,1 Griffiths Street, FAIRLIGHT, Lot 13 DP 978699,1 Griffiths Street, FAIRLIGHT, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN386992 - MOD2023/0611	The date of this notice of determination	Modification of Development Consent DA2023/0192 granted for Alterations and additions to a dwelling house including a swimming pool Add Condition 1A - Modification of Consent - Approved Plans and supporting documentation Amend Condition 7 -On-Site Stormwater Detention Details Amend Condition 14 - Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures Add Condition 16A - Required Tree Planting

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
S4.55_1.00	B	Site Analysis	Graphio	4 December 2023
S4.55_3.00	B	Ground Floor Plan	Graphio	4 December 2023
S4.55_3.01	B	Demolition Plan	Graphio	4 December 2023

S4.55_4.00	B	Roof Plan	Graphio	4 December 2023
S4.55_5.00	B	Section	Graphio	4 December 2023
S4.55_6.00	B	Elevations	Graphio	4 December 2023
S4.55_6.01	B	Elevations Cont.	Graphio	4 December 2023
S4.55_6.02	B	Elevations Cont.	Graphio	4 December 2023
2681.GD.01	B	Landscape Plan	Greenland Design	26 October 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1374783	N/A	The trustees for the AMS Trust	3 November 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Amend Condition - 7 - On-Site Stormwater Detention Details - to read as follows:

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 Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Aiden Hogan, drawing number 022021 C01 Rev E and C02 Rev C, dated 25/10/23 and 24/10/23 respectively. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. A section through the on-site detention tank and control pit to ensure the top of the tank is below the overflow pipe.
2. Details of the detention tank including invert and top water levels.
3. Invert level and pipe size of the emergency overflow pipe.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier 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.

C. Amend Condition 14 - Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures - to read as follows:

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

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment 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 as to user is to be submitted.

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

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

D. Add Condition 16A - Required Tree Planting

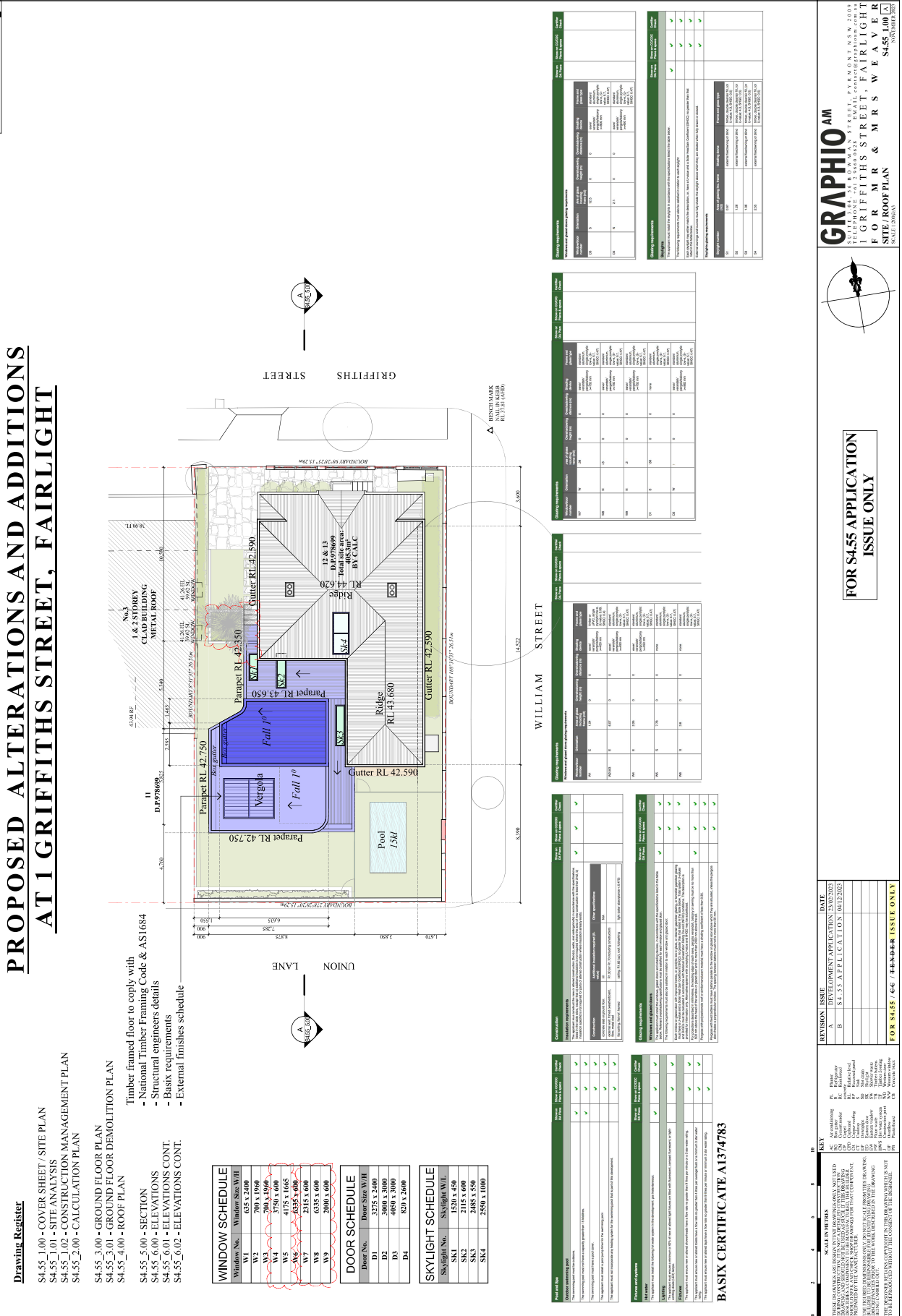
Trees shall be planted in accordance with the following:

- a) 1 x native tree shall be planted within the property to achieve at least 4 metres height at maturity, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward or may be *Tristania laurina* 'Luscious' as indicated on the landscape plan; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
 - ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

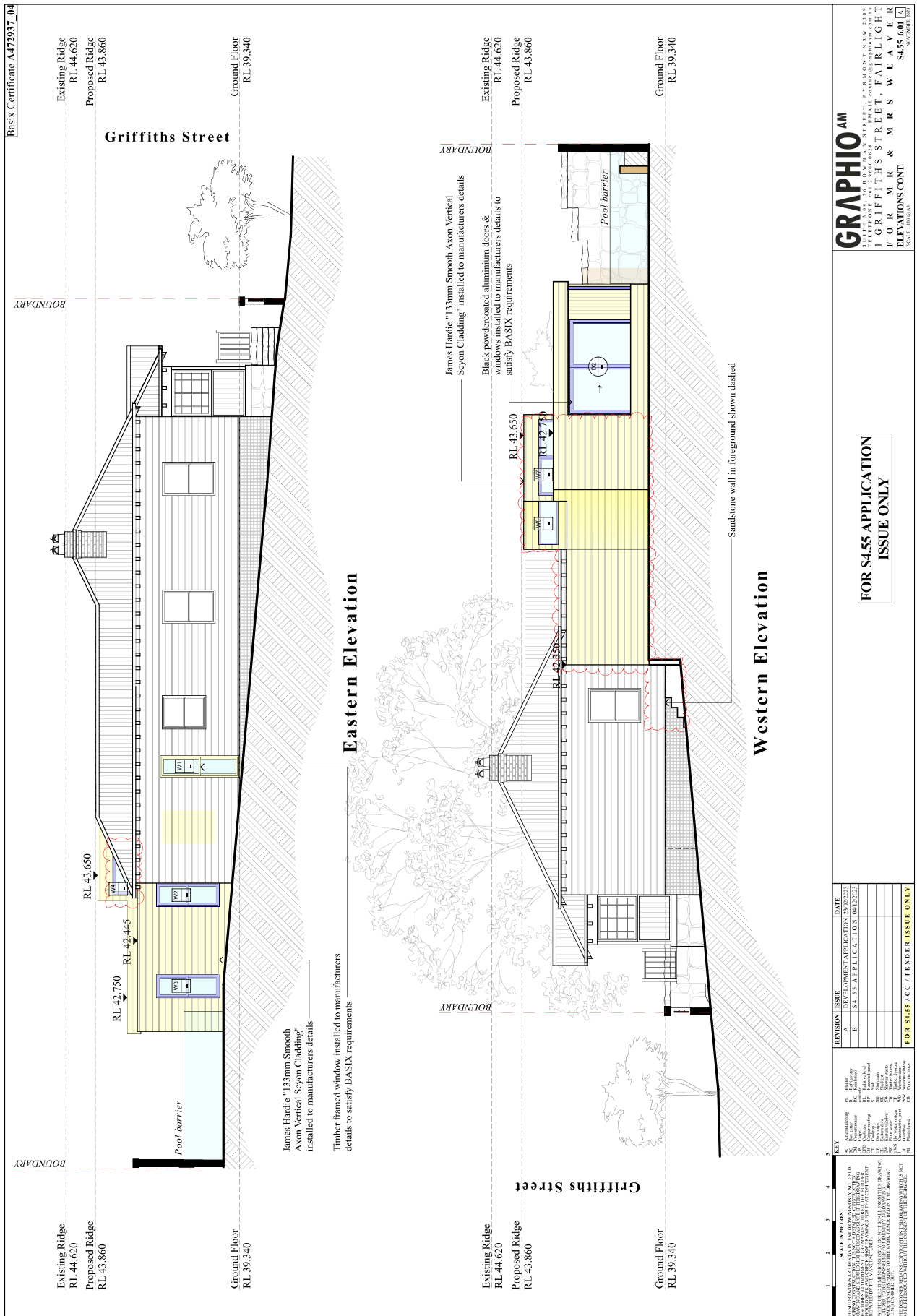
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

Basis Certificate A472937_04







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