

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0441
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 13 DP 15193, 26 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA163/2017 granted for alterations and additions to the existing dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Jaxon Kenny Rudduck Clare Jean Rudduck
Applicant:	Jaxon Kenny Rudduck Clare Jean Rudduck

Application Lodged:	17/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/09/2020 to 07/10/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify DA163/2017, which approved alterations and additions to the existing dwelling house. The proposed modifications involve;

Basement:

- Retaining basement as existing,
- Removal of guest bedroom and bathroom,
- Removal of internal access.

Ground floor:

- No changes are proposed to the approved floor plan.

First floor:

- Extend the first floor above the north-west corner of the existing dwelling to provide a new bedroom,
- The new floor plan will comprise of study/spare bedroom, bathroom, main bedroom, ensuite and dressing room,
- Relocate and extend approved skylight.

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 Development Control Plan - 4.1.7 First Floor and Roof Additions

SITE DESCRIPTION

Property Description:	Lot 13 DP 15193 , 26 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject property is commonly known as 26 Lewis Street, Balgowlah Heights and legally known as Lot 13 in DP 15193. The site is located on the eastern side of Lewis Street. The property is regular in shape, has a frontage of 12.19m to Lewis Street, an average depth of 34.29m and an overall site area of 418.1m ² . The property currently contains

a two-storey dwelling with vehicular access via an existing driveway from Lewis Street to an existing hard stand area to the front of the existing dwelling. The property slopes approximately 2.5m from west to east.

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:

DA163/2017

Application for alterations and additions to an existing dwelling house, including but not limited to; construction of a first floor addition, internal works and construction of a carport. This proposal was approved under delegation on 05 September 2017.

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 DA163/2017, 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 development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA163/2017 for the following reasons:</p> <ul style="list-style-type: none"> • The development will maintain compatibility with the scale and nature of the previously works • The modification will achieve a higher level of compliance with MLEP's FSR control, while remaining compatible with the approved built form. • The proposed works are not considered to result in any adverse neighbouring impacts.
(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 DA163/2017 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (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 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided	No submissions were received in relation to this application.

Section 4.55 (2) - Other Modifications	Comments
by the development control plan, as the case may be.	

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
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 development application has been publicly exhibited from 23/09/2020 to 07/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and

operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A282628_03 dated 25 August 2020).

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m	8.3m (First floor extension)	N/A	Yes
Floor Space Ratio	FSR: 0.45:1 188.145sqm	0.44:1 185.5sqm	FSR: 0.43:1 180.1sqm	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes

Clause	Compliance with Requirements
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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 418.1sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	500sqm of site area per dwelling	418.1sqm of site area per dwelling	Unchanged	Yes
4.1.2.1 Wall Height	North: 7.1m	7.7m	6.9m - First floor extension	Yes
	South: 7.1m	7.7m	6.9m - First floor extension	Yes
4.1.2.2 Number of Storeys	2	3	3	Unchanged
4.1.2.3 Roof Height	Height: 2.5m	1.5m	0.9m - First floor extension	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.2m to carport 7.7m to dwelling	8.3m - First floor extension	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North setback side (dwelling) - 2.56m	2.36m	3.1m - First floor extension	Yes
	North setback side (carport) - 0.96m	1.0m	1.0m	Unchanged
	South setback side (dwelling) - 2.56m	1.5m	1.5m	Unchanged
4.1.4.4 Rear Setbacks	8m	9.9m	9.9m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (229.95sqm)	66.25% (277sqm)	66.25% (277sqm)	Yes
	Open space above ground 40% of total open space (110.8sqm)	6% (17sqm)	6% (17sqm)	
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (96.95sqm)	68.26% (189.1sqm)	68.26% (189.1sqm)	Yes
	2 native trees	0 trees	0 trees	Unchanged
4.1.5.3 Private Open Space	18m per dwelling	155sqm	155sqm	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	1 spaces	Unchanged

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	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

4.1.7 First Floor and Roof Additions

The proposed modification involves extending the approved first floor 6.0m to the west, which will contain a new bedroom. The proposed addition is appropriately sited above the north-west corner of the existing dwelling and provides compliant setbacks to the adjoining boundaries. In addition, the modification sits below the maximum building height. Overall, due to the above the modifications to the first floor will not result in any adverse impacts to neighbouring properties or the streetscape.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0441 for Modification of Development Consent DA163/2017 granted for alterations and additions to the existing dwelling house on land at Lot 13 DP 15193,26 Lewis Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Dwg. 406/02 Site Plan	04 September 2020	Stephen Grech and Associates
Dwg. 406/05 Proposed Basement Plan	04 September 2020	Stephen Grech and Associates
Dwg. 406/06 Proposed Street Level Plan	04 September 2020	Stephen Grech and Associates
Dwg. 406/07 Proposed First Plan	04 September 2020	Stephen Grech and Associates
Dwg. 406/08 Proposed Roof Plan	04 September 2020	Stephen Grech and Associates
Dwg. 406/09 Proposed South Elevation	04 September 2020	Stephen Grech and Associates
Dwg. 406/10 Proposed North Elevation	04 September 2020	Stephen Grech and Associates
Dwg. 406/11 Proposed East and West Elevations	04 September 2020	Stephen Grech and Associates
Dwg. 406/12 Proposed Street View Elevation	04 September 2020	Stephen Grech and Associates
Dwg. 406/13 Proposed Sections	04 September 2020	Stephen Grech and Associates
Dwg. 406/19 Proposed Landscape Concept Plan	04 September 2020	Stephen Grech and Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A282628_03	25 August 2020	Stephen Grech and Associates

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

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

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

Signed



Kye Miles, Planner

The application is determined on 10/11/2020, under the delegated authority of:



Rodney Piggott, Manager Development Assessments