

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0313
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 6 DP 18433, 17 Maretimo Street BALGOWLAH NSW 2093
Proposed Development:	Modification of Development consent No. DA219/2016 granted for demolition of the existing garage, construction of a driveway, four hardstand car parking spaces, a vehicle turning platform, drainage works and two lot Torrens Title Land Subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Pasquale Pagliaro
Applicant:	Pasquale Pagliaro

Application Lodged:	16/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	27/07/2020 to 10/08/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 6%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for a modification to an approved two lot subdivision. The modification of the development involve:

- Deletion of the car turning mechanism and replace with hard stand driveway
- Amend the configuration of the right of carriageway to allow compliant swept path to allow vehicles to enter and exit in a forward direction
- Amendment to the lot sizing in to account for the amended right of carriageway
- Modification to the drainage layout as to allow direct connection of the charged system fro Lot 2 to the street and account for the concept dwelling design on Lot 1 (with no dwellings or structures proposed as part of this application).

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 Development Control Plan - 4.1.1.2 Residential Land Subdivision

SITE DESCRIPTION

Property Description:	Lot 6 DP 18433 , 17 Maretimo Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western of Maretimo Street.</p> <p>The site is regular in shape with a frontage of 13.11m along Maretimo Street and a depth of 61.6m. The site has a surveyed area of 804.7m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey dwelling and detached garage.</p> <p>The site has a relatively flat gradient with a slight fall form south to north.</p> <p>The site does not contain any significant canopy tree plantings.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by detached dwelling houses and semi-detached dwellings. The sites to the south are elevated above the subject site with a retaining wall adjoining the boundary.

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:

9 November 2016

Development Application DA 219/2016 for the demolition of the existing garage, removal of trees, construction of a new driveway, four (4) hardstand car parking space, a vehicle turning platform, drainage works and two (2) lot Torrens Title Land Subdivision was granted consent by the Northern Beaches Council Development Assessment Unit.

13 August 2019

Modification Application Mod2018/0646 to Development Consent DA 219/2016 was withdrawn. The application was withdrawn due to stormwater issues raised by Council's Development Engineer.

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 DA219/2016, 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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The lot boundaries remain unchanged, with only the internal easement configuration changed • The location of parking as intended by the original application remains in the same portion of the site • The deletion of the turntable provides for a more simple outcome that requires less maintenance and allows vehicles to still enter/exit in a forward direction. • The still remains a suitable area of a dwelling in the western portion of the site as envisaged by the original approval
(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	<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 DA219/2016 for the following reasons:</p> <ul style="list-style-type: none"> • The overall boundaries and lot configuration remain unchanged, with only a minor adjustment to the internal right of carriageway. • The development will result in a outcome consistent with that intended under the original application being for two detached dwellings with vehicle access. • The location of the access driveway remains unchanged. • There remains the same amount of lots approved under the original application.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and

Section 4.55(1A) - Other Modifications	Comments
(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	Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 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 by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 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	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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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 Warringah/Manly/Pittwater 21 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 'Matters for Consideration'	Comments
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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/07/2020 to 10/08/2020 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Luka Damic	4 Ethel Street BALGOWLAH NSW 2093
Ms Yvette Josephine-Ann Giblin	2 Ethel Street BALGOWLAH NSW 2093

The following issues were raised in the submissions and each have been addressed below:

- The changes will further reduce the lot size and is non-compliant with the LEP
- The changes to the lot sizes will result in development that will make compliance with the landscaped open space control difficult to achieve. Lot 2 appears appears to be non-compliant at existing.
- Cars leaving and entering the garage parking from lot 1 will need to use lot 2 for vehicle turning, meaning the lot is not self-sufficient for intended use.
- The proposal does not have an allowance for a functional landscape backyard space at the back of the property, which should be a quiet space in line with the rest of the neighborhood design.
- This proposal also will generate additional noise which could be heard from the backyard of our property, 2 Ethel Street, Balgowlah. The proposed outdoor terrace above the garage, poses privacy concerns as it would look down onto our back deck, into our rear rooms and be at the same level and directly in line with our upper deck and living space.
- The Lot 1 building setback of 9.61m from the street is inconsistent with all nearby properties on Maretimo Street which are set back 6m from the street.
- The entry path to the new building is also right along side the backyard fence which poses noise and privacy concerns.
- We note that there is still a significant difference in house dimensions from the original approved drawing (number 1133SD.DWG) which showed conceptual building footprint of 68.5 square meters (12.2m x 5.6m). The building in the proposed drawings appears to be almost double in size with little consideration for neighbouring properties on Ethel street that will be directly impacted.

The matters raised within the submissions are addressed as follows:

- *The changes will further reduce the lot size and is non-compliant with the LEP*
Comment:
 The non-compliance with the lot area is discussed in detail elsewhere within this report and the non-compliance is considered acceptable for the reasons outlined in this report.
- *The changes to the lot sizes will result in development that will make compliance with the landscaped open space control difficult to achieve. Lot 2 appears appears to be non-compliant at existing.*
Comment:
 Lot 2 has an existing dwelling that is to be retained as part of the subdivision, as originally approved. The outcome of the development upon Lot 2 remains unchanged.

The area available for landscaping will remain largely unchanged via this modification application, with car parking provided within the south-western corner of Lot 1 as originally approved for a car parking area. The amendment to the geometry of the right of way will result in a minor increase in hard surfaces to accommodate a compliant turning area. However, the changes are not considered to result in a development that would be inconsistent with the desired future character of the area and would result in an outcome generally consistent with that approved under the original application.

Any new development application for a dwelling will be assessed against the landscape open space control including the objectives of the controls.
- *Cars leaving and entering the garage parking from lot 1 will need to use lot 2 for vehicle turning, meaning the lot is not self-sufficient for intended use.*
Comment:
 The previous scheme was reliant upon an easement for the vehicle turntable and this could be dealt with via the creation of a right of carriageway. The amended scheme is not dissimilar to the original approval, however the geometry of the right of carriageway has been amended to allow the vehicle manuring without mechanical assistance.
- *The proposal does not have an allowance for a functional landscape backyard space at the back of the property, which should be a quiet space in line with the rest of the neighborhood design.*
Comment:
 The original scheme allocated parking in this part of the site. The amended scheme is not inconsistent with this and will result in a similar outcome with parking centralised within the site.
- *This proposal also will generate additional noise which could be heard from the backyard of our property, 2 Ethel Street, Balgowlah. The proposed outdoor terrace above the garage, poses privacy concerns as it would look down onto our back deck, into our rear rooms and be at the same level and directly in line with our upper deck and living space.*
Comment:
 Concept dwelling plans were provided with this application. However, no dwelling is applied for under this application and the approval of this modification does not consent to any new structures or dwelling design. A condition is recommended in this regard. Any proposed dwelling, garage or terrace is subject to a new development application where it will be

assessed against the controls.

- *The Lot 1 building setback of 9.61m from the street is inconsistent with all nearby properties on Maretimo Street which are set back 6m from the street.*

Comment:

Concept dwelling plans were provided with this application. However, no dwelling is applied for under this application and the approval of this modification does not consent to any new structures or dwelling design. Any proposed dwelling, will be assessed against the controls included the front building setback.

- *The entry path to the new building is also right along side the backyard fence which poses noise and privacy concerns.*

Comment:

As above, the dwelling concept is not approved as part of this development application. This will be assessed under any application lodged for a new dwelling.

- *We note that there is still a significant difference in house dimensions from the original approved drawing (number 1133SD.DWG) which showed conceptual building footprint of 68.5 square meters (12.2m x 5.6m). The building in the proposed drawings appears to be almost double in size with little consideration for neighbouring properties on Ethel street that will be directly impacted.*

Comment:

As above, the dwelling concept is not approved as part of this development application. This will be assessed under any application lodged for a new dwelling.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineering has no objection to the application. As the amendment of EP&A Act, a subdivision work certificate is required ion this subdivision. As such, the new conditions are placed in comply with the requirement.

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 (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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
Minimum subdivision lot size:	300m ²	Lot 1: 356.8m ² (296.1m ² excluding Right of Carriageway)	Lot 1: 356.8m ² (281.9m ² excluding Right of Carriageway)	6%	No
		Lot 2: 447.9m ² (379.0m ² excluding	Lot 2: 447.9m ² (370.9m ² excluding	N/A	Yes

		Right of Carriageway)	Right of Carriageway)		
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Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. In accordance with this, the Applicant is not required to submit a written request to vary the floor space ratio development standard. Nevertheless, an assessment of the variation is as follows:

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	300sqm
Proposed:	281.9sqm (Lot 1)
Percentage variation to requirement:	6%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum development standard, 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 4.1 - Minimum subdivision lot size development standard 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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

Whilst clause 4.6 does not apply to an application made pursuant to Section 4.55 of the Act the following assessment of the resultant lot sizes having regard to the objectives of the standard has found strict compliance to be both unreasonable and unnecessary as follows:

- *The proposed allotment width and depth are unaltered with Lot 1 continuing to be capable of accommodating a generally compliant dwelling house form.*
- *The variation facilitates the deletion of the approved vehicle turning platform (turntable) with the accompanying vehicle sweep path analysis demonstrating the acceptability of such outcome. Whilst the gross area of the proposed Lots is unaltered the changes to ROW geometry has resulted in a slight increase in the area of the ROW. Such modification affords a superior access and parking outcome which with vehicles able to enter and exit in a forward direction without mechanical assistance.*
- *The location is generally characterised by a rectangular allotment and residential development pattern. There is an established precedent of allotments to the north and west of the site having been subdivided similar to the nature proposed. The proposal is compatible with this pattern and nature of development in this location and within the vicinity of the site. In summary, there is a precedent for the*

nature, scale and configuration of the land subdivision proposed.

- The site is of an appropriate size and configuration, unconstrained by any significant limiting environment characteristics to accommodate the proposal with future development on Lot 1 able to achieve acceptable streetscape outcomes.*
- The proposed allotments are assessed as compatible with character of the residential development (their siting and design) within the local context consistent with the development pattern of allotments to the north and west.*
- The land is ideally located within an area established for residential use, serviced by key infrastructure, open space, bus services and neighbourhood shops.*

Council can be satisfied that the Lot sizes proposed satisfy the objectives of the standard and accordingly strict compliance is both unreasonable and unnecessary under the circumstances.

Although the particular tests of Clause 4.6 do not apply to a modification application, Council has considered the reasons put forward by the applicant and generally agree with the reasons outlined above. Council was satisfied under the original application that the requirements of Clause 4.6 were met for a variation to the lot size for the original development. As the amendments to the application are minor with a reduction of 14.2sqm, Council agree that the further reduction in lot size is worthy of support given the general outcome of the site is unchanged with regard to visual impact, impact upon neighbours and adequate arrangements for vehicles to enter and exit the site in a forward direction are maintained.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

cl 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 Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:

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

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping.

Comment:

The proposed amendment to the geometry of the right of carriageway will result in the area of carparking generally consistent with the original approval and central to the site. The amendment to the right of carriageway configuration does not directly impact streetscape presentation of the development and the built form outcome will be subject to a further development application. The subdivision pattern does not change from the original approval with only the right of carriageway being amended. The site retains a usable area for a future building in the eastern portion of the site in accordance with the original approval.

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.

Comment:

The original development consent included a centralised parking area and access driveway along the northern boundary. This residential character outcome remains the same via the proposed modification and the built form to be considered under a future application. The main dwelling house will remain in the eastern portion of the site as originally intended and the western portion used for car parking as originally intended. The overall subdivision pattern remains unchanged with only the internal right of carriageway configuration amended.

(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential.

Comment:

There are no significant trees which would require removal as a result of the amendments to the right of carriageway configuration. A garage being provided within the designated parking area within the Western portion of lot one would not result in any unreasonable visual impact or overshadowing by virtue of the level changes between the sites, with the subject site being significantly lower than the sites to the south. Future development will not impact upon public or private views.

(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Comment:

The site has sufficient access to public transport and the development maintains the number of lots as originally approved.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment: The proposed development results in the same amount of residential lots (two lots) as originally approved. The subdivision provides one additional lot for the community.

- *To provide for a variety of housing types and densities.*

Comment: The proposal as amended still provides for two detached dwellings, consistent with the original approval.

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

Comment: This is not applicable to the development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, 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 Minimum Subdivision Lot Size Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Mainly Development Control Plan

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	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
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

Detailed Assessment

4.1.1.2 Residential Land Subdivision

Under the original development application for subdivision it was considered how a dwelling could be accommodated on the site, including how car parking arrangements will work.

The amended the configuration of the easement (and thus reducing the lot size of Lot 1 by 14.2sqm) relates to the geometry required to facilitate the vehicle turning areas and does not further restrict the ability for the construction of a dwelling on the eastern portion of the site within Lot 1. The amendments result in a car parking location generally consistent with the development as previously approved and therefore the layout remains consistent with the original subdivision approval as intended.

The amended configuration indicates that a garage is to be located within the parking area for the site capable of accommodating two cars. The garage in this location and configuration is required to enable vehicle maneuverability without the use of a mechanical turn table.

The garage is not proposed under this application and no garage is approved under this application (a condition is applied in this regard). However, the amended easement and drainage layout is designed with the intention of a garage in this location. Council has considered the garage in this location and consider it an appropriate location given the following:

- The location of a garage in this part of the site is generally consistent with the intended location of parking as anticipated under the original approval;
- The location of the garage does not further diminish opportunity for a suitable area for the construction of a dwelling on the eastern part of the site;
- The southern boundary consists of a retaining wall, with the site to the south elevated above the area of the garage. A single storey garage in this portion of the site would not create an unreasonable visual impact upon the southern property given the level changes between the two sites.
- The deletion of the turntable provides a more simple solution for vehicular access and removes opportunity for failure of the mechanical system, allowing cars to always exit the site in a forward

direction.

It is therefore considered that the amended easement layout does not significantly change the ability for the construction of a dwelling on Lot 1 when compared to the original approved layout. For the above reasons, the amended layout is supported.

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. Mod2020/0313 for Modification of Development consent No. DA219/2016 granted for demolition of the existing garage, construction of a driveway, four hardstand car parking spaces, a vehicle turning platform, drainage works and two lot Torrens Title Land Subdivision on land at Lot 6 DP 18433, 17 Maretimo Street, BALGOWLAH, 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
Proposed Subdivision Plan - 1133SDa.dwg	27 September 2018	Pinnacle Land Surveyors

Engineering Plans		
Drawing No.	Dated	Prepared By
DR-000 Rev 3	10/05/2020	Stellen
DR-001 Rev 4	16/12/2019	Stellen
DR-002 Rev 4	10/05/2020	Stellen
DR-003 Rev 0	10/05/2020	Stellen

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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

B. Add Condition 'Positive Covenant for On-site Stormwater Detention Prior to the issue of a Subdivision Certificate' to read as follows:

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site detention system.

C. Add Condition 'Right of Carriageway Prior to the issue of a Subdivision Certificate' to read as follows:

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

D. Add Condition 'Restriction as to User (On-site Stormwater Detention) Prior to the Issue of a Subdivision Certificate' to read as follows:

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

E. Add Condition 'Services Prior to the issue of a Subdivision Certificate' to read as follows:

The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

F. Add Condition 'Certification of On-site Detention System Prior to the Issue of a Subdivision Certificate' to read as follows:

A Certificate is to be submitted by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Principal Certifying Authority that the on-site stormwater detention has been constructed in accordance with the plans nominated on the Development Consent and relevant conditions of Development Consent. The Subdivision Certificate will not be released until this certification has been submitted and the Principal Certifying Authority has confirmed that this condition

has been satisfied.

Reason: To ensure the On-site Detention System has been built to the appropriate standard

G. Add Condition 'Sydney Water Compliance Certification Prior to the Issue of a Subdivision Certificate' to read as follows:

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

Reason: To ensure compliance with the statutory requirements of Sydney Water.

H. Add Condition 'Release of Subdivision Certificate Prior to the Issue of a Subdivision Certificate' to read as follows:

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

I. Add Condition 'Subdivision Certificate Application Prior to the Issue of a Construction Certificate' to read as follows:

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two

Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

J. Add Condition 'Title Encumbrances Prior to the Issue of a Subdivision Certificate' to read as follows:

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

K. Add Condition 'No Approval for Garage or Dwelling Design under this application' to read as follows:

No consent is granted or implied to be granted for the design of the garage and dwelling as shown in the submitted stormwater plans. All future dwelling and garage design is subject to a separate development application.

Reason: To ensure the approved development is consistent with what is applied for under the application.

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

Signed



Jordan Davies, Planner

The application is determined on 25/11/2020, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager