

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0544
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<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot 7 DP 5711, 5 A Hilltop Crescent FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0308 granted for demolition works and construction of a dwelling house including swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Andrew Charles Tompson Monique Angela Tompson
<b>Applicant:</b>	Andrew Charles Tompson

<b>Application Lodged:</b>	23/10/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	04/11/2020 to 18/11/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

Modification application for DA2019/0308, which approved demolition works and the construction of a new dwelling house and swimming pool. The proposed modifications involve;

- Relocation of approved solid-fuel fireplace on the upper floor level from the eastern side of the living room to the western side of the living room and construction of a flue. The flue will be located within the south-west corner of the approved roof terrace.
- Removing the void between the ground floor study and music room.
- Changing the roof material from Colorbond Basalt to Colorbond Ultra Windspray.

### 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

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 7 DP 5711 , 5 A Hilltop Crescent FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The site is a generally rectangular shaped lot (but with an angled front boundary), located on the southern side of Hilltop Crescent.</p> <p>The site is generally level in the northern half of the property, and then slopes down to the rear boundary across the southern half of the site.</p> <p>There is an existing detached dwelling on site, located in the southern half of the property where the land falls.</p> <p>Surrounding development consists of varied housing including detached dwellings, semi detached dwellings, dual occupancies and large residential flat buildings. There are residential flat buildings neighbouring the site to each side (east and west), and a dual occupancy to the rear.</p>

Map:



## SITE HISTORY

Pre-lodgement Meeting PLM2018/0288 was held on 06/12/2018 for Subdivision of Land, demolition works and construction of two (2) dwellings. The notes from this meeting indicated general support of a proposal similar to the one eventually lodged in the current application, with the applicant to address various issues such as building height, side setbacks, privacy and amenity issues, and view loss. Subdivision of the site was not supported, and has not been included in the current application.

Development Application DA2019/0308 was for demolition works and construction of a dwelling house including swimming pool. Approval was granted to this application on 04/10/2019.

## 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 DA2019/0308, 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><b>Yes</b></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"> <li>• The modifications will not adversely affect the approved built form, as the proposed roof colour is compatible within the locality.</li> <li>• The internal modifications are minor and retain compliance with the prescribed FSR control.</li> <li>• The modification involves relocating the approved solid-fuel fireplace, which will centrally locate the flue, minimising impacts to neighbouring properties.</li> <li>• The works are substantially the same.</li> </ul>
(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 DA2019/0308 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The works are deemed to be of a minimal environmental impact.</li> <li>• The proposal will not significantly affect the approved built form.</li> </ul>
(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 Environment 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 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)(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&amp;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&amp;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&amp;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&amp;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&amp;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 (1) (b) – the likely impacts of the development,	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the</p>



Section 4.15 'Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 04/11/2020 to 18/11/2020 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 Mark Marusic	Address Unknown
Mr Mark James Leslie Mrs Leonie Margaret Leslie	2 Hilltop Crescent FAIRLIGHT NSW 2094

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

- **Original approval,**
- **Visual impact of flue.**

The matters raised within the submissions are addressed as follows:

- **Original approval:** Concern has been raised with the acceptability of the original approval, raising questions against certain aspects of the development and also the externalities associated with it's construction.

Comment:

The merits of the original approval were deemed to be of a reasonable context. This is not a relevant consideration for the concerned modification application.

This matter does not warrant the refusal of this application.

- **Visual impact:** Concern has been raised with the location of the proposed flue, as it is considered to result in an unreasonable visual impact for the occupants of No. 2 Hilltop Crescent. In particular, the areas of concern are from No. 2 Hilltop Crescent's living areas.

Comment:

It is acknowledged that present outlook from the concerned living areas are highly valued by the occupants No. 2 Hilltop Crescent. Notwithstanding, the proposed flue will extend 700mm above the approved ridge height and will be centrally located, such that it will provide substantial setbacks from the subject site's property boundaries. In addition, the proposed flue will be set back approximately 50m from concerned property. Furthermore, the proposal is considered to be relatively lightweight and minimal in terms of it's design, such that it does not result in any unreasonable overshadowing and view loss. Overall, it is considered that proposed flue is adequately sited, which ensures that impacts to neighbouring properties are effectively minimised.

This matter does not warrant the refusal of this application.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><b>General Comments</b></p> <p>Environmental Health have been asked to consider this proposal for modification of Development Consent relating to the relocation of and solid fuel heating appliance</p> <p>Contrary to information supplied in the Statement of Environmental Effects, there appears to be no record of approval for the fire place under section 68 of the Local Government Act 1993, rather, the fireplace was approved under Development Approval DA2019/0308 for "Demolition works and construction of a dwelling house including swimming pool".</p> <p>Accordingly, it is recommended that appropriate conditions be placed on the development in relation to potential amenity impacts, maintenance and compliance with Australian Standards</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>

Internal Referral Body	Comments

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

Nil

### Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.26m	No change	N/A	Yes
Floor Space Ratio	FSR: 0.6:1	FSR: 0.59:1 (347sqm)	FSR: 0.59:1 (350sqm)	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
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes



Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

## Manly Development Control Plan

### Built Form Controls

The approved built form will not be altered by the proposed modification.

### 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
3.3.3 Footpath Tree Planting	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	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
4.1.2 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	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
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

## 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. Mod2020/0544 for Modification of Development Consent DA2019/0308 granted for demolition works and construction of a dwelling house including swimming pool on land at Lot 7 DP 5711,5 A Hilltop Crescent, FAIRLIGHT, 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
DA02 - Issue M: Site & Roof Plan	13 October 2020	Watershed Design
DA03 - Issue M: Roof Terrace Plan	13 October 2020	Watershed Design
DA04 - Issue M: Ground Floor Plan	13 October 2020	Watershed Design
DA05 - Issue M: Upper Floor Plan	13 October 2020	Watershed Design
DA08 - Issue M: Section A-A	13 October 2020	Watershed Design
DA09 - Issue M: Section B-B	13 October 2020	Watershed Design
DA10 - Issue M: West Elevation	13 October 2020	Watershed Design
DA11 - Issue M: East Elevation	13 October 2020	Watershed Design
DA12 - Issue M: South Elevation	13 October 2020	Watershed Design
DA13 - Issue M: North Elevation	13 October 2020	Watershed Design
DA20 - Issue M: External Materials & Finishes Schedule	13 October 2020	Watershed Design

### B. Add Condition - Installation of solid/fuel burning heaters, to read as follows:

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2018 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

### C. Add Condition - Certification of solid fuel burning heaters, to read as follows:

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

**D. Add Condition - Maintenance of solid fuel heaters, to read as follows:**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

**E. Add Condition - Operation of solid fuel burning heaters, to read as follows:**

You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke

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

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

**Signed**



**Kye Miles, Planner**

The application is determined on 10/12/2020, under the delegated authority of:



**Catriona Shirley, Acting Development Assessment Manager**