

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0474
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot B DP 104229, 64 Fairlight Street FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2019/1092 granted for Alterations and additions to a dwelling house including swimming pool
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:	Ian Alexander Donaldson Lucy Katherine Susan Shepherd
Applicant:	Manfredini Mccrae Architects Pty Ltd
Application Lodged:	12/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/09/2022 to 07/10/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify DA2019/1092 and Mod2021/0776 with the following changes:

- Reduction in the number of second floor windows on the east and west elevation,
- Reduction in second floor plan,
- New stairs and new balustrade rail and post to match existing,
- 1.8m high fence and gate to driveway,
- Replace existing roof tiles with medium grey tiles,
- Change style of the front and side fence and new pedestrian gate,
- New mail box,
- Change to lower retaining walls within the front yard,
- Modifications to the water feature,
- Rear bathroom windows smaller,

- Move external electrical box,
- Modify storage cupboard doors under bin enclosure.

Note: The application was amended after lodgement to include several changes that either had no environmental impact or reduce the environmental impact of the proposal. As a result of this, the application was not re notified.

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 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot B DP 104229 , 64 Fairlight Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Fairlight Street, Fairlight.</p> <p>The site is regular in shape with a frontage of 11.035m along Fairlight Street and a depth of 21.335m. The site has a surveyed area of 235.5m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey dwelling and a hard stand car parking space.</p>

The site sits below the street but is relatively flat.

The site has minimal vegetation with a small area of lawn at the front.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one to two storey residential dwellings and multi storey residential flat buildings.

Site Inspection

A site inspection was conducted 4 November 2022.

Map:



SITE HISTORY

Development Application DA2019/1092 was approved by the Development Determination Panel 05/02/2020 and a Modification MOD2021/0776 for the removal of the swimming pool was determined 10/01/2022.

A development application DA2022/0349 for the construction of a carport and front gate was approved 11/04/2022.

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 DA2019/1092, 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"> • Approved built form generally remains unchanged • The works are minor and will not seek any changes to the approved floor area or building height • It is not expected there will be any environmental impacts above those considered in the original development application.
(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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/1092 for the following reasons:</p> <ul style="list-style-type: none"> • The modified works relate to elements of the approved development application. • The proposed carport has been deleted. It is not expected there will be any environmental impacts above those considered in the original development application.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 23/09/2022 to 07/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate was submitted with the original application DA2019/1092 (see Certificate No. A353081_02 dated 9 January 2020) the application will not change the BASIX Certificate requirements for the site.

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	MOD Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.6m	No change	No change	12.9% (no changes)	N/A

Floor Space Ratio	FSR: 0.6:1	FSR: 0.71:1	No change	No change	16.6% (no changes)	N/A
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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
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

In 'Gann v Sutherland Shire Council [2008] NSWLEC 157', the NSW Land and Environment Court was prepared to distinguish an earlier line of authority, and hold that, since Section 4.55 (formerly s96) was a 'freestanding' provision, it could be utilised to modify a consent where (in that case) no SEPP 1 or Clause 4.6 had been lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the floor space ratio development standard, without reference to SEPP 1 or Clause 4.6, relying instead on the "free-standing" power of Section 4.55.

In this regard matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provision of the planning controls.

Whilst this modification application will result in a building height greater than that permitted by Clause 4.3 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 EP&A Act, which is a free standing provision 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 the 'substantially the same' test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

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. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure have been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under the MLEP 2013 and the variation can be supported.

The modification application seeks works above the 8.5m maximum building height, however does not seek to change the approved maximum height. The external bulk, scale and roof form of structure are considered to be unchanged as a result of the works above the maximum height control. In this

regard, Council can be satisfied that the modified development is substantially the same development as previously approved. No assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

4.4 Floor space ratio

In 'Gann v Sutherland Shire Council [2008] NSWLEC 157', the court was prepared to distinguish an earlier line of authority, and hold that, since Section 4.55 (formerly s96) was a 'freestanding' provision, it could be utilised to modify a consent where (in that case) no SEPP 1 or Clause 4.6 had been lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the floor space ratio (FSR) development standard, without reference to SEPP 1 or Clause 4.6, relying instead on the "free-standing" power of Section 4.55,

In this regard matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provision of the planning controls.

Whilst this modification application will result in a FSR greater than that 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 EP&A Act, which is a free standing provision 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 the 'substantially the same' test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

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. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure have been assessed and found that the development satisfies the underlying objectives of Clause 4.4 Floor Space Ratio under the MLEP 2013 and the variation can be supported.

The modification application does not seek to increase the approved floor area. The external bulk, scale and roof form of structure are considered to be unchanged. In this regard, Council can be satisfied that the modified development is substantially the same development as previously approved. No assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

Although the development application DA2019/1092 did not comply with Clause 4.4 Floor Space Ratio of the MLEP 2013 a Clause 4.6 was provided and approved. The modification seeks external modifications to the dwelling and does not propose any changes to the approved floor area. No further assessment required.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 235.5m²	Requirement	Approved	Modification	Proposed	Complies
4.1.2.1 Wall Height	N: 6.5m	8.8m (existing)	No change	no change	Yes

	S: 6.5m	8.1m (existing)	No change	no change	Yes
	E: 6.5m	5.2m (existing)	No change	no change	Yes
	W: 6.5m	8.5m	No change	no change	Yes
4.1.2.3 Roof Height	Height: 2.5m	4.12m	No change	no change	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	addition: 6.9m, consistent with prevailing setback Swimming pool: 1m	no changes to dwelling deletion of swimming pool	No change	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.9m W: 3m	4.2m 0.7m	no changes	E: 5.01m W: 0.8m	Yes-increase
	Windows: 3m	W: 0.795m	no changes	W: 0.8m	Yes - increase
4.1.4.4 Rear Setbacks	8m	5.1m	0.6m	Second floor - 5.086m	Yes - increase
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	41.64% (98.06m ²)	no change	no change	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (34.321m ²) of open space	35.12% (34.44m ²)	no change	no change	Yes
	1 native trees	0 trees	no change	no change	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	25.2m ²	no change	no change	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	2.8m	no change	no change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	no change	no change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

Whilst numerically non-compliant with the side setback requirements, the modified development does not exacerbate the approved non-compliant side building lines along the eastern and western side elevations. During the assessment of Development Application DA2019/1092 the numeric non-compliances were supported on merit due to consistency with the objectives of the control. Given these approved setbacks are increasing, no further consideration of this control is required for the purpose of this assessment.

4.1.5 Open Space and Landscaping

The existing development and site constraints limit the potential for full compliance with this control. The proposal is generally consistent with the approved open space and landscaped area and therefore no further assessment is deemed necessary.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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. Mod2022/0474 for Modification of Development Consent DA2019/1092 granted for Alterations and additions to a dwelling house including swimming pool on land at Lot B DP 104229,64 Fairlight Street, 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: F - Site Plan	10/11/22	MM+J Architects
DA04 - Issue: C - Excavation / Erosion & Sediment Control Plan	10/11/22	MM+J Architects
DA05 - Issue: B - Demolition Plan	10/11/22	MM+J Architects
DA06 - Issue: B - Ground Floor Plan	10/11/22	MM+J Architects
DA07 - Issue: F - First Floor Plan	10/11/22	MM+J Architects
DA018 - Issue: I - Second Floor Plan	10/11/22	MM+J Architects
DA09 - Issue: H - Sections	10/11/22	MM+J Architects
DA10 - Issue: L - Elevations	10/11/22	MM+J Architects

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L.SK.01 - Landscape Sketch Plan	08.08.22	Scape Design

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



Julie Edwards, Planner

The application is determined on 22/11/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments