

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0149
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 23 DP 9561, 1 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2021/1130 granted for Demolition works and construction of a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Angela Lorna Winter
Applicant:	Angela Lorna Winter
Application Lodged:	01/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	11/04/2022 to 25/04/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 28 September 2021 under Development Application DA2021/1130 for demolition works and construction of a dwelling house including a swimming pool.

This application has been made pursuant to Section 4.55(2) of the EP&A Act 1979 seeking to make the following amendments to the approved development:

Basement Level

- Remove void and add floor above.

Lower Ground Floor Level

- Replace void with storage, walk in robe and cellar.
- Reduce Rumpus Room window height with 600mm high sill wall.

Ground Floor Level

- Extend breakfast room window 500mm.
- Reduce family room west window 400mm.
- Extend covered rear terrace by 1.3m.

First Floor Level

- Omit bathroom 1 window.
- Omit laundry west window.
- Reduce bedroom 3 window height with 0.6m high sill wall.

Swimming Pool

- Reconfigure and extend west pool deck.
- New pool cabana and screen walls.
- Pool filter equipment at rear of pool with covering.
- Relocate plunge and lap pool 1m to the rear boundary.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

SITE DESCRIPTION

Property Description:	Lot 23 DP 9561 , 1 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of Tutus Street, Balgowlah Heights.</p> <p>The site is rectangular in shape with a frontage of 19.2m and a depth of 67.055m. The site has a surveyed area of 1286sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013. The site previously accommodated a two storey dwelling house. However, this dwelling has recently been demolished and construction works have commenced for the works approved under Development Application DA2021/1130.</p> <p>The site is well landscaped and contains numerous native and exotic tree species, in addition to large exposed rock outcrops located within the rear yard. The site adjoins Heathcliff Reserve to the south which contains dense vegetation, particularly towards the north-eastern portion of the reserve. The boundary between the site and adjacent reserve is not formally defined and access to the reserve (and Heathcliff Road) can be obtained through the rear of the site.</p> <p>The rear yard is situated at the top of a ridge line and slopes away to the north-east and west. The falls towards the northeast represents a decline of approximately 11.6m, whilst the falls towards the west represents a decline of approximately 2.4m.</p> <p>The site is not burdened by any restrictive covenants, however is identified within a potential landslip area on the Manly DCP 2013 mapping.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by dwelling houses (and ancillary structures) typically 2-3 storeys in height, although there are examples of 4 storey buildings.</p>

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **Pre-lodgement Meeting PLM2021/0033** to discuss a future application involving demolition works and construction of a dwelling house including a swimming pool.
- **Development Application DA2021/1130** for demolition works and construction of a dwelling house including a swimming pool approved by Council on 28 September 2021.
- **Construction Certificate CC2021/1465** issued on 24 November 2021 for the works approved under the aforementioned development consent.

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 DA2021/1130, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2021/1130 for the following reasons:</p> <ul style="list-style-type: none"> • The approved building envelope remains substantially unaltered. • The modified proposal does not alter the approved land use on the site. • The modified proposal will not have a materially different amenity impact on neighbouring residencies when compared to the approved development.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/1130 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>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>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely	(i) Environmental Impact

Section 4.15 'Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 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 11/04/2022 to 25/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Stephen Andrew O'Connor	3 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Mr Tex Stephens	66 Curban Street BALGOWLAH HEIGHTS NSW 2093

Two submissions were received following the public exhibition period. The following issues were raised in the submissions:

- **Acoustical Impacts of Pool Filter Box**

The submissions raised concerns that the pool filter box was located in close proximity to the northern side boundary.

Comment:

The proposed development approved under Development Application DA2021/1130 approved the pool filter equipment adjacent to the northern side and rear boundaries. In assessing this particular Section 4.55(2) Modification, it is noted that the pool filter equipment will be located in a similar location. However, the equipment has been located within an enclosed acoustic structure to prevent adverse acoustical impacts. It is further noted that the filter box is located approximately 19m from habitable rooms within the adjacent dwelling to the north (No. 3 Tutus Street) and approximately 36m from habitable rooms on the rear adjacent dwelling (No. 64 Curban Street). Condition 49 imposed under the original consent will limit the noise of the pool filter box to 5dB (A) above the background level when measured from any property boundary and/or habitable rooms. For these reasons, the impact is considered to be manageable.

- **View Loss from Pool Cabana**

The submissions raised concerns that the pool cabana will obscure sight lines to Heathcliff Reserve.

Comment:

This matter has been discussed within the section of this report relating to Clause 3.4.3 of the Manly DCP 2013, with the assessment having regard to the view sharing planning principle established within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*. In summary, the view impact arising from the cabana is considered to be negligible and therefore, reasonable.

- **FSR Compliance**

The submissions raised concerns that the proposed development may exceed the FSR development standard of 0.4:1.

Comment:

The FSR of the modified proposal equates to 0.384:1 (494.3sqm gross floor area), which complies with the development standard.

- **Excavation Works for Proposed Modification Works being carried out**

The submissions raised concerns that the excavation works related to the modified works for the pool have already been undertaken.

Comment:

Notwithstanding this allegation, it is noted that the provisions of Section 4.55 of the Environmental Planning and Assessment Act 1979 can be used to modify a development consent in the circumstance where the works subject to the Section 4.55 Modification had already been carried out. This is addressed within the NSW Land and Environment Court Case of *Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240*.

- **Tree Preservation**

The submissions raised concerns regarding tree preservation.

Comment:

The modified proposal does not result in the removal of additional native trees when compared to the original consent. The original consent permitted the removal of two non-exempt trees within the property boundaries.

- **Water Run-Off to western sites**

The submissions raised concerns of water runoff occurring towards western properties at Curban Street.

Comment:

Sediment and erosion control measures have been conditioned under the original consent to negate sediment migration to adjacent properties. Additional conditions have been placed under the original consent to ensure compliance with Council's Water Management for Development Policy, which will ensure that stormwater generated from the as-built development is appropriately managed.

- **Use of Cabana**

The submissions raised concerns of the pool cabana and whether there will be lights installed or whether food and drink facilities will be installed.

Comment:

The cabana is an unenclosed structure that provides for shading within the rear yard adjacent to the swimming pool. The plans do not depict any lights or food and drink facilities within the cabana.

Conclusion

The concerns raised within the submissions have been addressed above and resolve through conditions where necessary. The concerns do not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent DA2021/1130, including a change to the form of the approved dwelling house and swimming pool with extended covered terrace, and the addition of a pool cabana, as illustrated and described in plans and reports.</p> <p>The landscape outcome of the development is not altered and the landscape controls of the DCP are maintained by the approved Landscape Plans and condition of consent under the development consent.</p> <p>A Arboricultural Impact Assessment letter is provided and includes the determination that no additional trees require removal and that the modification proposals may result in negligible additional impacts to identified trees 2, 3, 4 and 5, yet with the development consent</p>

Internal Referral Body	Comments
	conditions in place, the modification works may be installed with negligible additional impact on such trees.
NECC (Bushland and Biodiversity)	Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2021/1130).
Parks, reserves, beaches, foreshore	<p>The application is for modification to development consent DA2021/1130, including a change to the form of the approved dwelling house and swimming pool with extended covered terrace, and the addition of a pool cabana, as illustrated and described in plans and reports.</p> <p>The proposed modification works are not detrimental to the landscape character of the adjoining Heathcliff Crescent Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the proposal.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections, subject to the standard condition requiring the works to be done in accordance with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near electrical assets. This condition was imposed under the original consent and thus, will not be applied under this modified consent.

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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to the standard condition requiring the works to be done in accordance with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near electrical assets. This condition was imposed under the original consent and thus, will not be applied under this modified consent.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 - Bushland in Urban Areas

The site adjoins land zoned RE1 Public Recreation (Heathcliff Reserve) and therefore, the provisions of this SEPP apply.

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

- (c) the need to retain any bushland on the land,*
- (d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

Comment:

The proposed development does not result in the removal of vegetation on the adjacent public open space. A condition has been included with the original development consent that prevents access through the adjoining reserve during construction works to minimise potential impacts. Furthermore, sediment and erosion control measures will be in place to prevent sediment migration to adjoining land.

Chapter 10 - Sydney Harbour Catchment

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Conclusion

As demonstrated above, the proposal aligns with the relevant provisions within SEPP (Biodiversity and Conservation) 2021.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.26m	8.26m	-	Yes
Floor Space Ratio	FSR: 0.4:1 (514.4sqm GFA)	FSR: 0.37:1 (478sqm GFA)	0.384:1 (494.3sqm GFA)	-	Yes

Notes:

1. The maximum height is taken from RL65.17.
2. GFA refers to gross floor area.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1286sqm	Requirement	Approved	Proposed	Complies
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4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 122sqm minimum GFA required based off no. bedrooms and bathrooms	478sqm GFA	494.3sqm GFA	Yes
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4)	7.46m	7.46m	Yes
	South: 7.4m (based on gradient 1:7)	7.59m	7.59m	No further non-compliance
4.1.2.2 Number of Storeys	2 storeys	3 storeys	3 storeys	No further non-compliance
4.1.2.3 Roof Height	Height: 2.5m	flat roof	flat roof	Yes
	Parapet Height: 0.6m	0.45m	0.45m	Yes
	Pitch: maximum 35 degrees	flat roof	flat roof	Yes
4.1.4.1 Street Front Setbacks	6m (as street does not have a uniform prevailing building line)	10m	10m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Windows: no windows within 3m of side boundaries	windows up to 1.5m of side boundary	windows up to 1.5m of side boundary	No further non-compliance
	North: 2.49m (1/3 of proposed wall height)	2.3m - 7.1m	2.3m - 7.1m	No further non-compliance
	South: N/A - Clause 4.1.4.6 applies as southern boundary adjoins RE1 zone	N/A	N/A	Yes
4.1.4.4 Rear Setbacks	8m (for dwelling portion)	20.9m	19.61m (dwelling) 2.55m (pool cabana)	No - pool cabana
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	South: 6m (common boundary)	1.5m - 6m	1.5m - 6m (dwelling) 8.16m (pool cabana)	No further non-compliance for dwelling
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (514.4sqm) of site area	63.27% (813.59sqm)	62.67% (805.99sqm)	Yes
	Open space above ground 25% (201.50sqm) of total open space	6.2% (50sqm) - 6.15% of previously proposed TOS	6.2% (50sqm)	
4.1.5.2 Landscaped Area	Landscaped area 40% (322.40sqm) of proposed total open space	71.28% (579.96sqm) of open space	67.87% (547.06sqm)	Yes
	4 native trees	> 4 native trees	> 4 native trees	Yes

4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	> 18sqm	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2m (width of basement dedicated to parking)	6.2m (width of basement dedicated to parking)	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.5m	0.5m	Yes
	Curtilage: 1m from side or rear boundaries	1.3m	1.3m	Yes
	Water Line: 1.5m from side or rear boundaries	1.8m	1.8m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	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
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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	No	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Facilities)		
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	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

Detailed Assessment

3.4.3 Maintenance of Views

The occupants of the neighbouring property to the north (No. 3 Tutus Street) of the subject site have raised concern that the swimming pool cabana will impede view lines towards Heathcliff Reserve to the south. To assess this impact, Council's Assessment Planner examined the adjacent property on 4 May 2022.

Merit consideration:

The development is considered against the objectives of the control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The affected view comprises canopy trees and vegetation within Heathcliff Reserve to the south of No. 3. Tutus Street. The views are currently partially obstructed by boundary fencing along the dividing side boundary between the subject site and No. 3. Tutus Street. This particular view is not considered to hold significant value in accordance with this planning principle.

It is noted that the view of concern is not the primary view from No. 3. Tutus Street. The adjacent property benefits from largely uninterrupted views towards the east, which includes the Sydney Harbour

Catchment, North Head (including St Patrick's Estate), Manly Wharf and the distant Pacific Ocean horizon. This view corridor is considered to be iconic when considered against this planning principle. It is noted that this view is not affected by the proposed works.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The affected view is obtained from the rear yard of No. 3 Tutus Street over the southern side boundary. The view is obtained from a standing position.

The unaffected view towards the east is obtained over the front boundary from the ground, middle and upper floors of the adjacent dwelling house at No. 3 Tutus Street, including from living areas. The views can be obtained from both standing and sitting positions.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

The affected view is obtained from the backyard within the subject site. This area will not receive as high volumes of pedestrian movement when compared to the swimming pool, terraced areas and living room that is orientated towards the east to maximise the iconic view. It is noted that the height of the pool cabana is sited 310mm higher than the approved 1.8m high fence on the inside of the northern side boundary at the subject site (No. 1 Tutus Street). The cabana may obscure a small area of tree canopy.

Given the minimal nature of the views lost (i.e. small area of tree canopy across a side boundary) and the fact that the iconic view towards the east is unaffected, the qualitative extent of the view loss is considered to be negligible.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The pool cabana is located within the 8m rear setback area. However, it is common for ancillary single storey structures of this nature to be sited within the rear yard. As the view impact is considered to be

negligible, the impact is therefore deemed reasonable.

Conclusion

Council is satisfied that the development achieves consistency with the objectives of this control and the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

3.9 Mechanical Plant Equipment

The proposed development approved under Development Application DA2021/1130 approved the pool filter equipment adjacent to the northern side and rear boundaries, which is inconsistent with the prerequisite that requires pool filter equipment to be located centrally on the site. Nevertheless, Condition 49 of the consent was imposed to negate unreasonable acoustical impacts from the pool equipment. The condition reads as follows:

49. Noise

All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

Reason: To ensure an appropriate level of residential amenity.

In assessing this particular Section 4.55(2) Modification, it is noted that the pool filter equipment will be located in a similar location. However, the equipment has been located within an enclosed acoustic structure to prevent adverse acoustical impacts. It is further noted that the filter box is located approximately 19m from habitable rooms within the adjacent dwelling to the north (No. 3 Tutus Street) and approximately 36m from habitable rooms on the rear adjacent dwelling (No. 64 Curban Street).

For these reasons, it is considered that the acoustical impacts will be acceptable within a low density residential area.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The southern elevation of the approved dwelling house has a maximum wall height of 7.59m, which represents a 2.57% variation from the numeric requirement. This variation was supported on merit due to consistencies with the objectives of this control.

It assessing this particular Section 4.55(2) Modification, it is noted that the modified development does not increase the maximum wall height of the development. Thus, no further consideration of this control is required for the purpose of this assessment.

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

Description of non-compliance

The swimming pool cabana is setback 2.55m from the rear boundary, which does not satisfy the 8m numeric requirement. It is noted that the dwelling house component remains compliant with the numeric requirement.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The swimming pool cabana is located in the rear yard and will not be visible from Tutus Street. Furthermore, the proposal complies with the Manly DCP 2013 total open space and landscaped area numerical controls, thereby maintaining the desired landscaped character of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The swimming pool cabana is centrally positioned within the rear yard and does not represent unreasonable amenity impacts, specifically with regards to visual bulk, privacy, view sharing and solar access. The cabana is also sited within the rear yard and does not impact upon traffic conditions and will not detract from the existing and desired streetscape character. It is further noted that small ancillary structures within the rear yard are common within the broader area.

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

Comment:

Flexibility is afforded with regards to the rear setback numeric non-compliance as the cabana does not give rise to unacceptable streetscape or amenity impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

Sufficient planting, deep soil landscaping and open space has been provided throughout the site. In addition, the cabana is minimal in height and will not detract from the integrity of Heathcliff Road to the

south.

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

Comment:

The site is not bushfire prone

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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. Mod2022/0149 for Modification of Development Consent DA2021/1130 granted for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 23 DP 9561,1 Tutus Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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
DA03 (Revision M) - Site Plan	25 February 2022	Achilles Apostolellis Architecture
DA05 (Revision M) - Basement	25 February 2022	Achilles Apostolellis Architecture
DA06 (Revision M) - Lower Ground	25 February 2022	Achilles Apostolellis Architecture
DA07 (Revision M) - Ground Floor	25 February 2022	Achilles Apostolellis Architecture
DA08 (Revision M) - First Floor	25 February 2022	Achilles Apostolellis Architecture
DA09 (Revision M) - Roof Plan	25 February 2022	Achilles Apostolellis Architecture
DA10 (Revision M) - Section A	25 February 2022	Achilles Apostolellis Architecture
DA11 (Revision M) - Section B	25 February 2022	Achilles Apostolellis Architecture
DA12 (Revision M) - North Elevation	25 February 2022	Achilles Apostolellis Architecture
DA13 (Revision M) - South Elevation	25 February 2022	Achilles Apostolellis Architecture

DA14 (Revision M) - East Elevation	25 February 2022	Achilles Apostolellis Architecture
DA15 (Revision M) - West Elevation	25 February 2022	Achilles Apostolellis Architecture
S4.55-100 (Revision M) - Pool Modification	25 February 2022	Achilles Apostolellis Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Advice Ref: 33920Z let	8 March 2022	JK Geotechnics
Arboricultural Advice	14 March 2022	Hugh The Arborist

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

17A. External Finishes to Cabana Roof

The external finish to the cabana roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

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

Signed



Thomas Burns, Planner

The application is determined on 23/05/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager