

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0505
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<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot 51 DP 9202, 20 Fisher Street BALGOWLAH HEIGHTS NSW 2093
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0877 granted for alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density 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>	Melissa Carol Bradley Christopher David Burton Bradley
<b>Applicant:</b>	Bawtree Design

<b>Application Lodged:</b>	12/10/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	19/10/2020 to 02/11/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify development consent DA2019/0877. The works comprise of the following:

#### Lower Ground Floor

- LG W01 and LG W02 - delete
- LG D02 - combine into one door and column deleted

#### Ground Floor

- G W04 - glazing area reduced
- G D02 - door moved and window deleted

- G W05 - convert door to window
- G W06 and G W07 - window deleted
- G D05 - convert window to door and delete sliding door
- G W08 and G W09 - glazed window area reduced
- G W10 - highlight window added
- modification to edge of balcony

#### First Floor

- F W05 and F W08 - glazing area reduced
- F W10 - window enlarged, glazing increased and privacy screen added
- F W11 and F W12 - window enlarged
- convert green roof to pebble roof

### ASSESSMENT INTRODUCTION

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

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

### SUMMARY OF ASSESSMENT ISSUES

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

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

### SITE DESCRIPTION

**Property Description:**

Lot 51 DP 9202 , 20 Fisher Street BALGOWLAH HEIGHTS

	NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment with a double street frontage, located on the eastern side of Fisher Street and the western side of Beatty Street.</p> <p>The site is regular in shape with a splayed frontage of 18.8m along Fisher Street, a secondary frontage of 16.8m along Beatty Street and a depth of 62.7m and has a surveyed area of 970.3m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three storey dwelling house within a landscaped setting.</p> <p>The site has a cross fall from southwest to northeast (front to rear) of approximately 7.4m.</p> <p>The site is not known to contain any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by similar scaled residential development within landscaped settings.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time.

DA2019/0877 for alterations and additions to a dwelling house was approved on the 27 December 2019. This is the first modification to the 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 DA2019/0877, 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 proposed modifications are minor in nature and will not change the conclusion of the original assessment and development consent</li> <li>• no additional environmental impacts are expected as a result of the modification</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 DA2019/0877 for the following reasons</p> <ul style="list-style-type: none"> <li>• the modification does not change the outcomes of the original assessment</li> <li>• the proposed modifications does not comprise of any changes to the approved building height, floor space ratio and general built form</li> </ul>
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and



Section 4.55(1A) - Other Modifications	Comments
(i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Assessment 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.	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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;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&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> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> 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><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) 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	See discussion on “Notification & Submissions Received” in this

Section 4.15 'Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	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 19/10/2020 to 02/11/2020 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 of the application Council received no submissions.

## REFERRALS

No referrals were sent in relation to this application

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A349983\_03, dated 29/09/2020). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

### **SEPP (Infrastructure) 2007**

#### Ausgrid

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

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

#### Comment:

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

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. 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.

### **SEPP (Coastal Management) 2018**

The proposed modification does not alter the approved development's level of compliance with CM SEPP.



## 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	9.05m	Unaltered	N/A	Yes
Floor Space Ratio	FSR: 0.4:1	FSR: 0.438:1	Unaltered	N/A	Yes

### 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
6.8 Landslide risk	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: 970.3sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	NW: 7.1m (based on gradient 1:10)	8.4m	Unaltered	As approved
	SE: 7.5m (based on gradient 1:6)	8.9m	Unaltered	As approved
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	Unaltered	Yes
4.1.4.1 Street Front Setbacks	6m	7.6m, consistent with prevailing setback	Unaltered	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW: 2.8m (based on wall height)	Retaining wall - 0.8m	Unaltered	As approved
		Lower ground floor - 1.8m	Unaltered	As approved
		Ground & First floor - 1.8m - 2.3m	Unaltered	As approved
	SE: 2.9m (based on wall height)	Lower ground & ground floor -	Unaltered	As approved

		1.3m		
		Garage - Nil (existing)	Unaltered	As approved
		First floor - 1.8m	Unaltered	As approved
	Windows: 3m	1.8m	Unaltered	As approved
4.1.4.4 Rear Setbacks	8m	Planter - 6.2m	Unaltered	As approved
		Pool coping - 8.3m	Unaltered	Yes
		Pool edge - 9.3m	Unaltered	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	56.6%	Unaltered	As approved
	Open space above ground 25% of total open space	2.7%	Unaltered	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	50.3%	Unaltered	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	5.9m	Unaltered	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.2m	Unaltered	As approved
	1m curtilage/1.5m water side/rear setback	1.8m curtilage 3.8m water edge	Unaltered	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Unaltered	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
3.4 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

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

The proposed modification does not alter the approved wall height non-compliance. As such, consistency with the control objectives is maintained.

#### **4.1.3 Floor Space Ratio (FSR)**

The proposed modification does not alter the approved floor space ratio. As such, consistency with the control objectives is maintained.

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

The proposed modification does not alter the approved building setbacks. As such, consistency with the control objectives is maintained.

#### **4.1.5 Open Space and Landscaping**

The proposed modification does not alter the approved total open space. As such, consistency with the control objectives is maintained.

#### **4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)**

The proposed modification does not alter the approved on-site parking provision. As such, consistency with the control objectives is maintained.

#### **4.1.9 Swimming Pools, Spas and Water Features**

The proposed modification does not alter the approved siting of the swimming pool. As such, consistency with the control objectives is maintained.

#### **4.4.5 Earthworks (Excavation and Filling)**

The proposed modification does not alter the approved extent of excavation and filling. As such, consistency with the control objectives is maintained.

### **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. Mod2020/0505 for Modification of Development Consent DA2019/0877 granted for alterations and additions to a dwelling house on land at Lot 51 DP 9202,20 Fisher Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

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

#### a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
1811/DA.01 Issue A	29/09/2020	Bawtree Design
1811/DA.02 Issue A	29/09/2020	Bawtree Design
1811/DA.03 Issue A	29/09/2020	Bawtree Design
1811/DA.04 Issue A	29/09/2020	Bawtree Design
1811/DA.06 Issue A	29/09/2020	Bawtree Design
1811/DA.07 Issue A	29/09/2020	Bawtree Design
1811/DA.08 Issue A	29/09/2020	Bawtree Design
1811/DA.10 Issue A	29/09/2020	Bawtree Design
1811/DA.11 Issue A	29/09/2020	Bawtree Design
1811/DA.12 Issue A	29/09/2020	Bawtree Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A349983_03	29/09/2020	Bawtree Design

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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**



**Nick Keeler, Planner**

The application is determined on 04/11/2020, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**