

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0378
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<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 1 DP 91180, 22 Abernethy Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Modification of Development Consent DA0320/2016 granted for alterations and additions to the existing dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned E3 Environmental Management
<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>	Kristie Hardy Edwin John Hardy
<b>Applicant:</b>	Edwin John Hardy

<b>Application lodged:</b>	23/07/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	27/07/2018 to 14/08/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Recommendation:</b>	Approval

### 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 - 6.5 Terrestrial biodiversity  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 91180 , 22 Abernethy Street SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the western side of Abernethy Street.</p> <p>The site is regular in shape with a frontage of 14.48m along Abernethy Street and a depth of 121m. The site has a surveyed area of 1733m<sup>2</sup>.</p> <p>The site is located within the E3 Environmental Management zone and accommodates a detached dwelling.</p> <p>The site slopes 54.6m from front (east) to rear (west) and includes a cross fall of 4.4m.</p> <p>The site includes extensive natural and planted vegetation.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached dwelling houses.</p>

Map:



## SITE HISTORY

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

DA0320/2016 - Alterations and additions to the existing dwelling house - Approved 16 March 2017.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal modification to DA320/2016 includes works as follows:

- New roof over existing ground floor balcony
- New glazed doors to existing ground floor balcony
- Demolition of existing first floor terrace
- Replacement of WF 14 with new bay window

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

## 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 DA0320/2016, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.15(1A) - Other Modifications</b>	<b>Comments</b>
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	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	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 DA0320/2016.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

### Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 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, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</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 clause is not relevant to this application.</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 clause is not relevant to this application.</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 clause is not relevant to this application.</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	(i) <b>Environmental Impact</b>



Section 4.15 'Matters for Consideration'	Comments
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 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” 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 applicant has provided a Bush Fire Report as part of the application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Natalie Peta Ward	26 Abernethy Street SEAFORTH NSW 2092

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

- Traffic management

The matters raised within the submissions are addressed as follows:

- Traffic management

Comment:

The modification application is limited to minor changes to the dwelling approval. As traffic management is not relevant to the modification, it is beyond the scope of the application and no conditions are applicable. Any allegation of parking violations in the vicinity should be reported to either Council Rangers or the Police.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification has been assessed against Clause 6.5 (Terrestrial Biodiversity) of the Manly LEP 2013. The modifications will not result in an additional significant change to soft open space or increase in vegetation removal. It is therefore considered that the proposal can achieve consistency with the control, subject to retention of existing biodiversity conditions for DA0320/2016.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

## 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)

### 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.

### 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	9.53m	Proposed works: 7.7m	N/A	N/A
Floor Space Ratio	0.4:1 693.2m <sup>2</sup>	0.17:1 287m <sup>2</sup>	No change proposed	N/A	N/A

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

### Detailed Assessment

#### 4.3 Height of buildings

The previously approved building height was non-compliant. No further variation is proposed in this application.

#### 6.5 Terrestrial biodiversity

The proposal includes the demolition of existing building elements and the construction of additional



element above ground level. Council's Natural Resources Officer raised no objection to the proposed modification, subject to retention of conditions from DA0320/2016.

### 6.9 Foreshore scenic protection area

The proposed additions are minor in scale and will have no unreasonable impact in relation to visual aesthetic amenity or views to and from Sydney Harbour.

### Manly Development Control Plan

#### Built Form Controls

There are no Development Controls under Part 4 to consider as part of the assessment.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

### 3.4.1 Sunlight Access and Overshadowing

The proposed new roof over the ground floor deck is centrally located within the site and will result in no unreasonable overshadowing impacts.

### 3.4.2 Privacy and Security

The proposed roof is over the existing ground floor terrace and will not result in any unreasonable privacy or overlooking impacts. Further, the application includes the demolition of the existing terrace located at the floor level above.

### 5.4.1 Foreshore Scenic Protection Area

The proposed additions are minor in scale and will have no unreasonable impact in relation to visual aesthetic amenity or views to and from Sydney Harbour.

### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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**

### **Manly Section 94 Development Contributions Plan**

S94 Contributions are not applicable to this 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. Mod2018/0378 for Modification of Development Consent DA0320/2016 granted for alterations and additions to the existing dwelling house on land at Lot 1 DP 91180,22 Abernethy Street, SEAFORTH, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
566.A.01 Site Plan	Issue D, March 2016	Porebski Architects
566.A.03 Ground Floor Plan	Issue D, March 2016	Porebski Architects
566.A.04 First Floor Plan	Issue D, March 2016	Porebski Architects
566.A.05 Roof Plan	Issue D, March 2016	Porebski Architects
566.A.06 Elevations	Issue D, March 2016	Porebski Architects
566.A.07 Sections	Issue D, March 2016	Porebski Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Protection Assessment	8 August 2018	Eco Logical Australia

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

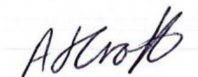
d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

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

**Signed**



**Adam Croft, Planner**

The application is determined on 17/09/2018, under the delegated authority of:




**Rodney Piggott, Manager Development Assessments**























## ATTACHMENT A

No notification plan recorded.

## ATTACHMENT B

	<b>Notification Document</b>	<b>Title</b>	<b>Date</b>
	2018/472148	Notification Map	26/07/2018

## ATTACHMENT C

Reference Number	Document	Date
 2018/470754	Report - Statement of Environmental Effects	23/07/2018
 2018/470756	Report - BASIX	23/07/2018
 2018/470760	Plan - Site	23/07/2018
 MOD2018/0378	22 Abernethy Street SEAFORTH NSW 2092 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	23/07/2018
 2018/463982	DA Acknowledgement Letter - Edwin John Hardy	23/07/2018
 2018/470746	Modification Application Form	25/07/2018
 2018/470749	Applicant Details	25/07/2018
 2018/470785	Plans - External	25/07/2018
 2018/470788	Plans - Master Set	25/07/2018
 2018/471821	Request for Further Information - Mod2018/0378	26/07/2018
 2018/472114	ARP Notification Map	26/07/2018
 2018/472139	DA Acknowledgement Letter (not integrated) - Edwin John Hardy	26/07/2018
 2018/472148	Notification Map	26/07/2018
 2018/472157	Notification Letter - 13	26/07/2018
 2018/483924	Request for information - Mod2018/0378 22 Abernethy Street Seaforth - Woodhead	31/07/2018
 2018/483587	Online Submission - Ward	01/08/2018
 2018/486004	Outgoing Email Re: Response to Information Request - Woodhead	02/08/2018
 2018/503532	Report - Bushfire	09/08/2018
 2018/559761	Natural Environment Referral Response - Biodiversity	29/08/2018
 2018/577302	Working Plans	05/09/2018
 2018/603343	Assessment Report	17/09/2018
 2018/605875	Stamped Plans	18/09/2018