

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0673
----------------------------	--------------

Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 3 DP 12817, 45 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2021/0380 granted for Alterations and additions to 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:	Daniel William Bell
Applicant:	Rapid Plans Pty Ltd

Application Lodged:	06/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	12/12/2022 to 17/01/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted under Development Application DA2021/0380 on 1 June 2021 for alterations and additions to a dwelling house including a swimming pool.

This application has been made pursuant to Section 4.55(1A) of the EP&A Act 1979 seeking to make the following amendments to the approved development:

- Provide additional floor space on the lower ground floor adjacent to the approved office space, in turn creating a larger office, new bathroom and internal staircase to access the ground floor above.
- Additional paving to the approved pool area.
- Larger window W1 & new window W3.
- Removing the front curve off the ground floor deck.

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 3 DP 12817 , 45 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Ernest Street, Balgowlah Heights.</p> <p>The site is regular in shape with a frontage of 14.325m along Ernest Street and respective depths of 33.845m and 33.585m along the western and eastern side boundaries. The site has a surveyed area of 482.9sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the MLEP 2013 and accommodates a two storey dwelling house with a subfloor garage below.</p> <p>The front setback area contains an exposed rock outcrop and cheese tree approximately 8m in height. Landscaping within the rear yard consists of a level lawn area and shrubbery.</p>

The site experiences a fall of approximately 4.2m that slopes away from the south-western rear corner towards the northeastern front corner. This represents an approximate slope of 11.5%.

The surrounding built environment is characterised by 1-2 storey detached low density residential development.

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 history:

- **Development Application DA2021/0380** for alterations and additions to a dwelling house including a swimming pool approved by Council on 1 June 2021.

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 DA2021/0380, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The additional gross floor area is located within the footprint of the existing subfloor, thereby resulting in negligible changes to the overall bulk and scale of the approved development. • The other changes proposed are minor and result in negligible amenity impacts, specifically with regards to visual outlook, views, privacy and solar access.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/0380 for the following reasons:</p> <ul style="list-style-type: none"> • The modified proposal will not have a materially different impact when compared to the approved development. • The modified proposal still comprises alterations and additions to a dwelling house including a swimming pool.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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>(i) Environmental Impact 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>

Section 4.15 'Matters for Consideration'	Comments
	(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.
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	No submissions were received in relation to this application.
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 12/12/2022 to 17/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification of development consent DA2021/0380. The landscape outcome is not altered as a result of the modification proposal and Landscape Referral raise no objections. Landscape conditions 12, 13, 14, 20, 21, 24 and 25 under the development consent remain unaltered.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application (see Certificate No. A401580_04, dated 17 November 2022). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Biodiversity and Conservation) 2021

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.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	no change to overall building height and new works below 8.5m height limit	no change to overall building height and new works below 8.5m height limit	-	Yes
Floor	0.45:1	0.386:1 (186.5sqm	0.43:1 (207.8sqm GFA)	-	Yes

Space Ratio	(217.31sqm GFA)	GFA)			
-------------	--------------------	------	--	--	--

Note: 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
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 482.9sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: at least 112sqm GFA (based off 4 bedrooms and 3 bathrooms)	183.8sqm GFA	207.8sqm GFA	Yes
4.1.2.1 Wall Height	East: 7.1m (based on gradient 1:10)	1.44m above existing ground level (new office)	1.44m above existing ground level (new office)	Yes
	West: 7.1m (based on gradient 1:10)	1.44m above existing ground level (new office)	1.44m above existing ground level (new office)	Yes
4.1.2.2 Number of Storeys	2 storeys	3 storeys	3 storeys	No further non-compliance
4.1.4.1 Street Front Setbacks	Prevailing building line (7.9m)	8.28m (dwelling) 1.39m (swimming pool area)	9.3m (dwelling) 1.39m (swimming pool area)	No further non-compliance
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.57m (1/3 of existing max. wall height)	7.54m (dwelling)	7.54m (dwelling)	Yes
	West: 2.57m (1/3 of existing max. wall height)	1.12m (dwelling)	1.12m (dwelling)	No further non-compliance
	Windows: no windows within 3m of side boundaries	window W1 setback 1.12m from western side boundary	window W1 setback 1.12m from western side boundary window W3 setback 1.12m from western side boundary	No

4.1.4.4 Rear Setbacks	8m	no change to existing rear building line and setback further than 8m from rear boundary	no change to existing rear building line and setback further than 8m from rear boundary	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (265.6sqm) of site area	48.17% (232.6sqm)	48.17% (232.6sqm)	No further non-compliance
	Open space above ground 25% of total open space	nil	nil	
4.1.5.2 Landscaped Area	Landscaped area 35% (81.41sqm) of proposed open space	56.51% (131.45sqm)	51.96% (120.85sqm)	Yes
	2 native trees	1 tree	1 tree	No further non-compliance
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	>18sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	below existing ground level	below existing ground level	Yes
	1m curtilage/1.5m water side/rear setback	curtilage: 1.14m from west side boundary water line: 1.5m from western side boundary	curtilage: 1.14m from west side boundary water line: 1.5m from western side boundary	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
3.4 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
4.1.1 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	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

The DCP wall height provision states that dwelling houses shall not exceed 2 storeys in height. The approved dwelling house is a 3 storey building, which contravenes the DCP requirement. It is noted that both the approved development and current modified proposal do not result in a further increase in the number of storeys of the existing building. Therefore, 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 DCP side setback provision states that windows shall not be located within 3m of side boundaries. The modified proposal introduces a new west-facing window adjoining the home office on the lower ground floor. This window is setback 1.22m from the western side boundary, which presents a contravention to the DCP 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 overall form and scale of the modified proposal is generally consistent to that of the approved development. Hence, the modified development will not have an adverse impact upon the 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 new home office window has a 1.8m high window sill (when measured from the finished floor level), which prevents opportunities for overlooking into adjacent properties from seating and standing positions. Furthermore, the modified proposal will not result in unreasonable residential amenity impacts, specifically with regards to visual outlook, solar access, views and privacy. The modified proposal will also not preclude safe and adequate traffic conditions. Overall, the proposal is consistent with this objective.

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

Comment:

Flexibility has been afforded with regards to the location of the new office window, noting that the technical non-compliance does not result in adverse 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:

The modified proposal does not result in a further reduction to the approval total open space areas on the site and maintains adequate deep soil landscaping on the site.

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

4.1.5 Open Space and Landscaping

The approved quantum of total open space on the site accounts for 48.17% (232.6sqm) of the subject site, which does not meet the DCP numeric requirement of 55%. Furthermore, only 1 tree is provided on the subject site, which contravenes the DCP requirement of 2 trees.

Notwithstanding, the aforementioned non-compliances were supported on merit as the approved development achieves the underlying objectives of the DCP total open space/landscaping provision. It is noted that the modified proposal does not exacerbate the approved technical non-compliances. Therefore, no further consideration of this control is required for the purpose of this assessment.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0673 for Modification of Development Consent DA2021/0380 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 3 DP 12817,45 Ernest Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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
DAMod1003	17 November 2022	Rapid Plans
DAMod1011	17 November 2022	Rapid Plans
DAMod1012	17 November 2022	Rapid Plans
DAMod1013	17 November 2022	Rapid Plans
DAMod2001	17 November 2022	Rapid Plans
DAMod2002	17 November 2022	Rapid Plans
DAMod3000	17 November 2022	Rapid Plans
DAMod3001	17 November 2022	Rapid Plans
DAMod3002	17 November 2022	Rapid Plans
DAMod4000	17 November 2022	Rapid Plans
DAMod4001	17 November 2022	Rapid Plans
DAMod4002	17 November 2022	Rapid Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A401580_04	17 November 2022	Rapid Plans

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.

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

Signed



Thomas Burns, Planner

The application is determined on 19/01/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments