

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0997
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 22 DP 516006, 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 101 DP 564655, 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 7 DP 975160, 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 8 DP 975160, 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 21 DP 975160, 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 25 DP 975160, 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 26 DP 975160, 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 23 DP 518721, 176 - 180 Condamine Street BALGOWLAH NSW 2093
Proposed Development:	Modification of Development Consent DA2021/1013 granted for alterations and additions to a retail premises
Zoning:	Manly LEP2013 - Land zoned B6 Enterprise Corridor
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Wadins Pty Ltd
Applicant:	Nicholas Cavallo

Application Lodged:	14/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 16 November 2021 under Development Application DA2021/1013 for alterations and additions to an existing retail premises.

This application has been made pursuant to Section 4.55(1A) of the EP&A Act 1979 seeking to amend conditions 13 and 14 of the consent. Conditions 13 and 14 currently read as follows:

13. Disabled Parking Spaces

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

A report from an access consultant confirming that the proposed disabled parking spaces are compliant with the standard and appropriately dimensioned to serve their intended purpose is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure accessible spaces are fit for purpose in accordance with Australian Standards.

14. Shared Zone Bollard

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

The architectural plans indicate that the shared zone is not strictly compliant with AS2890.6:2009. Therefore, the applicant relies upon a Performance Solution, as permitted by the Building Code of Australia.

In this regard, the applicant seeks to amend conditions 13 and 14 to read as follows:

13. Disabled Parking Spaces

Where accessible parking spaces are provided, they must be designed to comply with the performance requirements of the Building Code of Australia. Details are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure accessible spaces are fit for purpose in accordance with BCA requirements.

14. Shared Zone Bollard

A bollard is to be provided at the shared zone between the accessible parking spaces in accordance with the performance requirements of the Building Code of Australia. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure accessible spaces are fit for purpose in accordance with BCA requirements.

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

There are no assessment issues.

SITE DESCRIPTION

<p>Property Description:</p>	<p>Lot 22 DP 516006 , 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 101 DP 564655 , 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 7 DP 975160 , 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 8 DP 975160 , 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 21 DP 975160 , 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 25 DP 975160 , 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 26 DP 975160 , 176 - 180 Condamine Street BALGOWLAH NSW 2093 Lot 23 DP 518721 , 176 - 180 Condamine Street BALGOWLAH NSW 2093</p>
<p>Detailed Site Description:</p>	<p>The subject site consists of eight (8) allotments with frontages to both Condamine Street (the primary frontage) and Roseberry Street (the secondary frontage).</p> <p>The site is located within the B6 Enterprise Corridor zone of Manly LEP 2013 and accommodates a multilevel commercial building used for retail of electrical / household products (Harvey Norman). The building comprises 11,850sqm of floor space.</p> <p>The site provides 215 car parking spaces, including six (6) accessible parking space at both ground floor level and level 1. Access to the site is provided from both Condamine Street and Roseberry Street.</p> <p>Adjoining and surrounding development is characterised by commercial development east of Condamine Street and</p>

residential properties to the west.

Map:



SITE HISTORY

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

- Development Application DA2020/0081 for alterations and additions to an existing retail premises approved by Council on 16 April 2020.
- Development Application DA2021/1013 for alterations and additions to an existing retail premises approved by Council on 16 November 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 DA2021/1013, 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
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes 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 modified development still provides sufficient off-street parking and will not have an adverse impact upon local traffic conditions.
<p>(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>	<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 DA2021/1013 for the following reasons:</p> <ul style="list-style-type: none"> • The modified development remains alterations and additions to an existing retail premises. • Existing access and parking arrangements will remain consistent with the approved development. • The modified development will not have a materially different impact when compared to the approved development.
<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 not been notified as the changes are considered to be minor, such that public exhibition is not required, in accordance with the Northern Beaches Community Participation Plan.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

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 commercial purposes for an extended period of time. The proposed development retains the commercial 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)(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)	<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>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>Clauses 93 and/or 94</u> of the EP&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&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 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
	<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	No submissions were received.
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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>MOD 2021/0997 has been assessed in relation to changes proposed to conditions 13 & 14 of DA2021/1013. The proposal to have these conditions accepted under a Performance Solution is considered acceptable having regard to the Report prepared by Maccess Consulting (Access Consultants) dated 13/12/2021. The wording of the conditions may be altered as follows:</p> <p>13. <u>Disabled Parking Spaces</u> Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009. In this regard compliance with this requirement may be achieved by a Performance Solution under A2.0 and DP8 of the Building Code of Australia. A report from an access consultant confirming that the proposed disabled parking spaces are compliant with the standard or Performance Solution is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate. Reason: To ensure accessible spaces are fit for purpose in accordance with Australian Standards.</p> <p>14. <u>Shared Zone Bollard</u> A bollard is to be provided at the shared zone between disabled spaces in accordance to</p>

Internal Referral Body	Comments
	<p>Australian Standards AS2890.6:2009. In this regard compliance with this requirement may be achieved by a Performance Solution under A2.0 and DP8 of the Building Code of Australia. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate. Reason: To ensure compliance with Australian Standards.</p>
Traffic Engineer	<p>Description of the proposed modification: Amendment to conditions 13 and 14 of Notice of Determination (DA 2021/1013) with regard to the accessible parking spaces</p> <p>The Traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> - <i>S4.55(1A) Modification – DA2021/1013</i> prepared by Knight Frank Town Planning dated 16 Dec 2021, - <i>Harvey Norman Balgowlah – Dedicated Accessible Car Spaces</i> prepared by Maccess Pty Ltd dated 13/12/2021, and - <i>Performance Solution Report</i> prepared by Maccess Pty Ltd dated 18 Aug 2021. <p>The modification has been assessed and no objection is raised to the proposed rewording of conditions 13 & 14 as outlined in the statement of modification. All other traffic conditions are to remain and no additional conditions are proposed</p>

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 commercial 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 commercial 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:	11m	no change	no change	N/A	N/A
Floor Space Ratio	1:1	no change	no change	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
Schedule 3 Parking and Access	Retailing / bulky goods: 1 space per 50sqm = 131.1 spaces (based on 6554sqm retailing bulky goods area) Bulky goods / storage: 1 space per 100sqm = 18.2 spaces (based on 1824sqm of bulky goods storage area) Total: 149.3 parking spaces required as part of the development	219 spaces (total)	219 spaces (total)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.3 Development in LEP Zone B6 Enterprise Corridor	Yes	Yes
4.3.4 Access, Loading and Parking	Yes	Yes
4.3.6 Drainage	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes

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. Mod2021/0997 for Modification of Development Consent DA2021/1013 granted for alterations and additions to a retail premises on land at Lot 22 DP 516006,176 - 180 Condamine Street, BALGOWLAH, Lot 101 DP 564655,176 - 180 Condamine Street, BALGOWLAH, Lot 7 DP 975160,176 - 180 Condamine Street, BALGOWLAH, Lot 8 DP 975160,176 - 180 Condamine Street, BALGOWLAH, Lot 21 DP 975160,176 - 180 Condamine Street, BALGOWLAH, Lot 25 DP 975160,176 - 180 Condamine Street, BALGOWLAH, Lot 26 DP 975160,176 - 180 Condamine Street, BALGOWLAH, Lot 23 DP 518721,176 - 180 Condamine Street, BALGOWLAH, subject to the conditions printed below:

Conditions to be Modified from Development Application DA2021/1013 under this Consent

Modify Condition 13 to read as follows:

13. Disabled Parking Spaces

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009. In this regard compliance with this requirement may be achieved by a Performance Solution under A2.0 and DP8 of the Building Code of Australia.

A report from an access consultant confirming that the proposed disabled parking spaces are compliant with the standard or Performance Solution is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure accessible spaces are fit for purpose in accordance with Australian Standards.

Modify Condition 14 to read as follows:

14. Shared Zone Bollard

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009. In this regard compliance with this requirement may be achieved by a Performance Solution under A2.0 and DP8 of the Building Code of Australia.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

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

Signed



Thomas Burns, Planner

The application is determined on 22/02/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager