

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0266
<b>Responsible Officer:</b>	David Auster
<b>Land to be developed (Address):</b>	Lot 8 DP 19148, 13 Redman Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Modification of Development Consent DA2021/0423 granted for Alterations and additions to a dwelling house including a swimming pool
<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>	Christopher Andrew Jeffrey Katherine Anne Schmidhofer
<b>Applicant:</b>	The Trustee For Sld Trust
<b>Application Lodged:</b>	23/05/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	06/06/2022 to 20/06/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The modifications that are sought include the following:

- Increase height of approved masonry retaining wall from 1300mm to 2600mm high and relocate 520mm closer to the rear boundary.
- Replace approved decking to the north of the alfresco area with 'crazy' paving
- Replace part of tiled side access path with turf
- Relocated side gate and fence return with new steps and low retaining wall adjacent to dwelling

### 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

<b>Property Description:</b>	Lot 8 DP 19148 , 13 Redman Street SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Redman Street and the southern side of Peacock Street.</p> <p>The site is a corner allotment with a frontage of 9.2m along Redman Street and 37.4m along Peacock Street. The site has a surveyed area of 571.5m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates single storey dwelling house with a tiled hip and valley roof. .</p> <p>The site slopes in eastern direction with an approximate fall of 7.0m.</p> <p>The site contain canopy trees, shrubbery and natural rock outcrops throughout the site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by low density living defined by 1-2 storey detached dwelling houses.</p>

Map:



## SITE HISTORY

DA2021/0423 was approved by Council on 27/05/2021.

## 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 DA2021/0423, 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:	

Section 4.55(1A) - Other Modifications	Comments
(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> <p>The proposed changes are generally minor, and will have minimal environmental impacts on the surrounding area. The modifications generally alter materials and make minor design changes. The biggest change is to remove the rock boulder in the south western corner of the site. The applicants have provided a geotechnical report to ensure the work is carried out safely and will not impact on the adjoining neighbour, as discussed in this report.</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>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 DA2021/0423 for the following reasons:</p> <p>The proposed changes are generally minor design changes, and will not significantly alter the overall scope or extent of the development as approved.</p>
(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	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</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>See discussion on “Notification &amp; Submissions Received” in this report.</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	There are no current draft environmental planning instruments.
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)	<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 allow Council to request additional information. Additional information was requested in relation to a geotechnical report.</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 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 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</p>



Section 4.15 'Matters for Consideration'	Comments
	application.
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) <b>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>(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 “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/06/2022 to 20/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Hermann Tona Mani	77 Peacock Street SEAFORTH NSW 2092

The following issues were raised in the submissions:

- Relocation of retaining wall

The above issues are addressed as follows:

- **Relocation of retaining wall**

The submission raised concerns that the relocation of the retaining wall would infringe setback controls and impact on access to the garage and path along the eastern side of number 77 Peacock St (the adjacent neighbour to the west of the subject site). Further concern was raised with regard to removal of the rock floater, which the objector believe reaches under their dwelling.

Comment:

The applicant was requested to provide a geotechnical report, which they have done. This report states that the rock floater should be removed due to safety concerns, and makes recommendations for the work to minimise any impacts on the adjoining neighbour. These recommendations will be required to be followed during the work by condition of consent. Further conditions are recommended to require pre and post construction dilapidation reporting of the neighbouring property. Subject to these conditions, the proposal is considered acceptable in this regard.

The setback of the retaining wall does not affect access on the neighbouring property. It remains within the subject site, and the retaining wall itself will remain below the natural ground level, and 2m from the common side boundary, well in excess of the 900mm minimum requirement. The proposal is considered acceptable in this regard.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent DA2021/0423, including: increase height of approved masonry retaining wall from 1300mm to 2600mm high to retain existing higher ground, relocate retaining wall 520mm closer the rear boundary, replace approved decking to the north of the alfresco area with crazy paving, replace part of tiled side access path with turf, relocated side gate and fence return with new steps and low retaining wall adjacent to dwelling, and remove the existing rock floater following heavy rains causing erosion under the floater and is reported as unstable.</p> <p><i>updated comments 03.08.2022:</i> A Geotechnical Report is submitted with the results of a geotechnical assessment of a rock overhang, appraising the stability of the rock overhang (floater). The report notes that the rock overhang is a large floater, disconnected from the intact sandstone bedrock / cliff line.</p> <p>As noted in the report, the existing rock overhang is assessed to have a <i>High</i> risk with respect to property, and the risk to life is assessed to be <i>Tolerable</i>, and that these risk levels are higher than normally accepted by regulatory authorities.</p> <p>Given this assessment, no objections are raised with regard to the</p>

Internal Referral Body	Comments
	<p>proposed removal of the rock overhang.</p> <p>Condition 1. Approved Plans and Supporting Documentation shall reference the approved plans under the modification application set of plans.</p> <p><i>previous comments 26.05.2022:</i> We note no Geotechnical Report is provided to support that the existing floater is unstable, or otherwise able to be supported by the construction of a retaining wall beneath, and a Geotechnical Report should be submitted that provides a recommendation for either retention or removal of the floater, including establishing an appropriate alignment for the retaining wall to support the floater should the floater be assessed as suitable for retention.</p> <p>No other concerns are raised with the modification proposals.</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 (Transport and Infrastructure) 2021

#### Ausgrid

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

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

#### Comment:



The proposal was referred to Ausgrid who raised no objections.

## 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	1.5m	2.6m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1	No additional floor space proposed	Unchanged	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
6.12 Essential services	Yes

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 571.5sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N 8.0m (based on	0.2m	Unchanged	Yes

	gradient 1:3)			
	S: 8.0m (based on gradient 1:3)	0.6m	Unchanged	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.2m, consistent with prevailing setback	Unchanged	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	W: 0.9m (Earthworks)	2.6m	2m	Yes
	S: 0.9m (Earthworks)	0.1m - 0.8m	Unchanged	Yes
	Secondary street frontage: Prevailing setback	0.8m	Unchanged	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% of site area (314.3sqm)	53.0% (303.0sqm)	Unchanged	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (110.0sqm)	50.3% (158.1sqm)	52.8% (165.8sqm)	Yes
	3 native trees	4 trees	Unchanged	Yes
4.1.5.3 Private Open Space	18m per dwelling	>18sqm	>18sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Below NGL	Unchanged	Yes
	1m curtilage/1.5m water side/rear setback	7.2m (Pool/Paving)	Unchanged	Yes
	N:1m curtilage/1.5m water setback	1.0m (Paving) 3.4m (Pool)	Unchanged	Yes
	S:1m curtilage/1.5m water setback	1.0m (Paving) 3.3m (Pool)	Unchanged	Yes
	W:1m curtilage/1.5m water setback	7.2m (Pool/Paving)	Unchanged	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes
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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	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

## 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 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0266 for Modification of Development Consent DA2021/0423 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 8 DP 19148, 13 Redman 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S4.55-01 Rev B	09/05/22	Space Landscape Designs
S4.55-02 Rev B	09/05/22	Space Landscape Designs

S4.55-03 Rev B	09/05/22	Space Landscape Designs
S4.55-05 Rev B	09/05/22	Space Landscape Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment of Rock Overhang 6978-G1	26 July 2022	Assetgeoenviro

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.

**B. Add Condition 9A, to be satisfied prior to Commencement of works, to read as follows:**

**9A. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties: 77 Peacock Street, Seaforth

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

**C. Add Condition 16A, to be satisfied prior to issue of an Occupation Certificate, to read as follows:**

**16A. Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

Compare the post-construction report with the pre-construction report,

Clearly identify any recent damage and whether or not it is likely to be the result of the development works,  
Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

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

**Signed**



**David Auster, Planner**

The application is determined on 05/08/2022, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**