

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0196
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<b>Responsible Officer:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot 20 DP 758044, 1 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
<b>Proposed Development:</b>	Modification of Development Consent DA2020/0077 granted for demolition works and construction of a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Kevin Scott Mooney
<b>Applicant:</b>	St Legend Pty Ltd

<b>Application Lodged:</b>	04/05/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	13/05/2022 to 27/05/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of modifications to approved development application DA2020/0077 for demolition works and construction of a new dwelling.

The following changes to the approved works are as per amended plans, dated 14.9.2022, which have deleted the pool (previously proposed) and retained the open atrium alfresco lounge undercover terrace for Level 1 resulting in no change to FSR:

- **Garage basement Level**
- Extend excavation in a south easterly direction to allow and additional storage room;
- Drainage perimeter (subfloor) and water tank storage cavity space.
- Reconfigure bin storage room;
- Provide door and side store window adjacent basement lift

- **Level 1**
- Additional excavation to allow storage cellar (non habitable space 2.1m clearance and below ground);

- **Section details**
- Amended detail reflect basement and Level 1 change;

#### **Ancillary**

- No change is proposed to floor levels or the overall height or setbacks to the approved dwelling house.

The modifications has deleted the intended inclusion of a spa and pool as part of the modification. As a consequence no Landscape changes or landscape referral is warranted. Changes to the storage do not affect any existing special conditions or engineering conditions (including drainage)

- The modification works (having removed the pool component inclusion and retaining the open sided undercroft does not affect FSR or side elevations of the approved scheme. The proposed reduction in the scope of works is consistent with the original reasons for granting approval.
- **Conditions**

- Condition 1, Approved plans and BASIX certification to be substituted and external referral (Ausgrid);

The amended plans were not re notified as per the Northern Beaches Community Participation Plan as they reduced the proposal.

## **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 - 4.4 Floor space ratio

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)  
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 20 DP 758044 , 1 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
<b>Detailed Site Description:</b>	<p>The land is 753.8m<sup>2</sup> in area and is located on the north western corner of Tabalum Road and Cutler Road. The site has a frontage of 18.29m to Tabalum Road and an arc frontage of 35.05m to Cutler Road. There is a splay corner affecting the site (at the intersection of Tabalum Road and Cutler Road).</p> <p>The land falls quite steeply from the Tabalum Road frontage at RL76.66 centrally to the rear boundary abutting No.6 Cutler Road at RL72.0 at the pool area. There is a retaining wall adjacent to the boundary with No.6 Cutler Road. The level at the base on the abutting property being approximately RL68.18.</p> <p>The site contains a three storey (with attic) brick detached dwelling house with a rear swimming pool located off the Cutler Road frontage.</p> <p>Vehicular access to a three car garage at the lower house level is located off Cutler Road. Access to an additional covered car parking space is available from Tabalum Road adjacent to the house entry. Surrounding development consists of low density detached housing and Sydney Harbour National Park is adjacent the site to the east.</p> <p>The site is subject to bushfire hazard zone and is in a location where broad views of the Harbour area (toward Sydney Heads and Sydney CBD) are available from the site and surrounding land. From various vantage positions, views to the south, west and north are also available from surrounding land (and the site) due to the ridgeline topography.</p> <p>There are no significant trees or unique rock outcrops.</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:

- **Development application No.DA2020/0077** Demolition works and construction of a dwelling house was approved by the Northern Beaches Planning Panel on the 13 November 2020.
- **Modification application No.MOD2021/0509** (to modify DA2020/0077) was approved by Council 11.10.2021

## 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 DA2020/0077, in full, with amendments detailed and assessed as follows:

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

Section 4.55(2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• It is not expected there will be any environmental impacts above those considered in the assessment of DA2020/0077, and MOD2021/0509.</li> <li>• The proposed modifications are minor and will mostly retain the built form as approved</li> <li>• The works are substantially the same as those already approved with the amended plans for the modification, dated 14.9.2022 Revision B, prepared by Legend Design Studio.</li> </ul>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0077 for the following reasons:</p> <ul style="list-style-type: none"> <li>• It is not expected there will be any environmental impacts above those considered in the assessment of DA2020/0077 (including as previously modified)</li> <li>• The proposed modifications are minor and will mostly retain the built form as approved and the pool structure and spa has been deleted from the modification works</li> <li>• The extend of excavation has been reduced by amended plans for the modification and enclosure of the ground floor is no longer proposed. Therefore, FSR will remain unchanged and the excavation will be consistent with that approved in the building stepping down the site.</li> </ul>
<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</p>	<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. The amended modification plans reduce the scope of works in that no longer seek an expansion of FSR, no longer include the swimming pool or spa. Excavation is confined closer to the existing approved excavated area and undercroft is no longer being enclosed to create floor space. The amendment / update to the mod plans therefore have no additional impact on surrounding land and do not warrant re-notification in accordance with the Community Participation Plan. The amended plans also remain online and viewable since lodgement on 16.9.2021 in response to Councils concerns raised by letter dated 10.8.2022.</p>



Section 4.55(2) - Other Modifications	Comments
modification of a development consent, and	
(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	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)(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>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information (RFI). Additional information was requested in this case in the form of reducing the scope of works as per Council's RFI letter.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 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>Clause 98 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>
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 modifications.
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 and amendments provided with the modification retain consistency with the original reasons for granting approval to the DA.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the modification (and the original DA) application that included a

certificate (prepared by Building Code & Bushfire Hazard Solutions, dated 8 July 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/05/2022 to 27/05/2022 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
NECC (Development Engineering)	<b>Supported with no modified conditions.</b>  Development Engineering has no objection to the modification.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response on 8.6.2022 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a modified condition of consent.

## 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 modification application (see Certificate No. 1040129S\_06 dated 28 March 2022).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.



## 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, subject to conditions which have been included in the recommendation of this report.

### Other Service Infrastructure Authorities

The application was not required to be referred to the Transport for NSW (TfNSW / RMS). No other service infrastructure referral issues are raised pursuant to the SEPP. *Sydney Water* requirements are addressed by separate administrative processes managed directly through *Sydney Water*.

## 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 and the parent DA addressed the requirements of land remediation pursuant to SEPP 55 previously. No further consideration of this issue is required and the site poses no risk of contamination. No further consideration is required under sub-section 4.6 (1) (b) and (c) of this Chapter.

## 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	9.6m	No change	3%	No

				(Existing)	(As approved)
Floor Space Ratio	FSR: 0.4:1 301.5sqm	FSR: 0.403:1 (1.2% variation)	No change	1.2% (Existing)	No (As approved)

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

##### **4.4 Floor space ratio**

In 'Gann v Sutherland Shire Council [2008] NSWLEC 157', the court was prepared to distinguish an earlier line of authority, and hold that, since Section 4.55 (formerly s96) was a 'freestanding' provision, it could be utilised to modify a consent where (in that case) no SEPP 1 or Clause 4.6 had been lodged. No works are in progress and therefore no issue regarding 'retrospective' use of Section 4.55 is raised.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the floor space ratio development standard, without reference to SEPP 1 of Clause 4.6, relying instead on the "free-standing" power of Section 4.55.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provision of the planning controls.

Whilst this modification application will result in no increased floor space ratio than that already approved by Clause 4.4 of the MLEP 2013. The application as amended therefore does not strictly need to address the requirements of Clause 4.6 because the increased FSR proposed has been removed following Council's letter to the applicant, dated 10 August 2022, and amended plans provided. The plans demonstrate that the basement garage, storerooms, equipment rooms, bin store and stairs are not FSR and they are all basement utilitarian areas. Additionally the 'wine cellar' has been change to smaller storage area that is also a basement room (no windows) and 2.1m to be a non-habitable space. The atrium / undercover seating area is open to the west as an unenclosed space. This application has been made under Section 4.55 of the EP&A Act, which is a free standing provision in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 subject to its own stand-alone tests (such as the 'substantially the same' test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification. No change is proposed to the approved building height either.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure are not changing following Councils' RFI letter to reduce the scale of works to a more minor modification.

The modification application has an approved FSR of 0.403:1 (303.91m<sup>2</sup> gross floor space), approved under Development Application DA2020/0077 are unchanged. The modified development (as per amended plans) results in no change to the development standard, and is generally the result of the small new areas of floor space for the ensuite and walk in robe extension.

The external bulk, scale, height and roof form of the modified structure are considered as generally acceptable, and the minor change in basement area does not affect the overall externally visible shape of the building, or any external environmental impacts. In this regard, Council can be satisfied that the modified development is substantially the same development as previously approved. No assessment against the objectives of Clause 4.6 is required for the modification and the MOD work is supported in this instance.

## Manly Development Control Plan

### Built Form Controls

<b>Built Form Controls - Site Area: 753.8m<sup>2</sup></b>	<b>Requirement</b>	<b>Approved</b>	<b>Proposed</b>	<b>Complies</b>
4.1.2.1 Wall Height	N: 8m (based on gradient 4.6:1)	7.8m	No change	Yes
	S: 8m (based on gradient 4.6:1)	8.2m	No change	No (As approved)
	E: 8m (based on gradient 4.6:1)	6.8m	No change	Yes
	W: 8m (based on gradient 4.6:1)	7.8m	No change	Yes
4.1.2.2 Number of Storeys	2	3	3	No (As approved)
4.1.2.3 Roof Height	Height: 2.5m	1.3m	1.3m	Yes
	Parapet Height: 0.6m	0.4m	0.4m	Yes
	Pitch: maximum 35 degrees	0 to 1 degree	0 to 1 degree	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	No change* (*See below regarding pools / spa setbacks)	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	2.6m (based on wall height)	North: 2.2m to 3.6m West: 10m	No change	No (As approved)
	Windows: 3m	North: 4.9 to 5.9m West: 15.2m	No change	Yes
	Secondary street frontage: Prevailing setback	Consistent with prevailing setback	No change to house walls (*See below regarding pools / spa setbacks)	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space 60% of site area 452.2sqm	548sqm or 75%	548.2sqm or 71%	Yes
	Open space above ground 40% max. of total open space	45sqm or 14.8%	No change	
4.1.5.2 Landscaped Area	Landscaped area Min. 40% of open space 181sqm	395sqm or 52%	333.4sqm or 60%	N/A
	3 native trees	3 trees	No change	Yes
4.1.5.3 Private Open Space	18sqm	262sqm	No change	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.0m	No change	Yes
4.1.9 Swimming pools, Spas and Water Features	Max 1m above ground 1m setback to coping 1.5m water edge	Existing in-ground pool to be removed	Pool deleted from MOD application	Yes (Existing terrace reinstated)
4.1.10 Fencing	1.5m high Open style	1.2m (Existing terrace yard 3.5m above road level)	1.2m timber fence refurbished replaced as required. and terraced garden below	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No change	Yes

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
3.3.3 Footpath Tree Planting	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
3.4.4 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
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	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
4.1.3 Floor Space Ratio (FSR)	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
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes



## Detailed Assessment

### **3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)**

The objectives of this Part of the DCP are:

- *To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*
- *To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

#### Comment

Detailed consideration of views, privacy, overlooking and overshadowing issues pursuant to the Manly DCP was made with the original development application. The modification works have been reduced in scope to no longer include a swimming pool and the FSR change remains unchanged with the plans retaining the open sided undercroft area (not enclosed). Therefore, no change to overshadowing is proposed and considerations of views, privacy and landscape amenity remain consistent with the approved plans.

The change in work are confined to basement rooms and subterranean storage space. The modification is consistent with the objectives and requirements of Part 3.4 of the Manly DCP.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Manly DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

#### Merit Consideration

*To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:*

*Limiting excavation, "cut and fill" and other earthworks;*

*Discouraging the alteration of the natural flow of ground and surface water;*

*Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*

*Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

#### Comment

- Excavation at the side of the garage area now includes space for drainage, subfloor access and water tanks. The site has substantial rock areas and will not cause unreasonable slope stability, subject to conditions. The additional excavation is entirely under the approved house footprint which already has a large excavated basement garage.
- The ground to be excavated is basement area and sandstone bedrock. The additional volume is not significantly more than that already approved for the development as a whole.
- The excavation works are appropriately setback from adjoining land and will not undermine or reduce environmental quality of adjacent land as the basement area is still under the house footprint changes.

- Excavated material is required to be appropriately disposed (as per NSW law and standard conditions already applicable)
- The site is in a developed urban area, with no additional tree removal proposed and there are no streams or water bodies, ground water in proximity to the house.
- No change is proposed to any external retaining walls as part of the modification works. (Refurbishing / rebuilding / replacing of existing selected retaining wall was included as part of the original development proposal).

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Manly DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **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. Mod2022/0196 for Modification of Development Consent DA2020/0077 granted for demolition works and construction of a dwelling house on land at Lot 20 DP 758044, 1 Tabalum Road, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

"1A. Modification of Consent - Approved Plans and supporting Documentation

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
A 04 A Excavation Plan	2.3.2022	Legend Design Studio
A 05 A Garage	2.3.2022	Legend Design Studio
A 06 B Level 1	14.9.2022	Legend Design Studio
A 10 B Section A	14.9.2022	Legend Design Studio
A 11 A Section B	2.3.2022	Legend Design Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Stormwater Additional Requirements	24.3.2022	NB Consulting
Updated Bushfire Assessment 191115C	7.4.2022	Bushfire Hazard Solutions
Geotechnical Investigation (excluding pool structure)	15.3.2022	White Geotechnical Group
Basix Certificate 1040129S_06	28.3.2022	Efficient Living

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 No.2A Compliance with Other Department, Authority or Service Requirements, to read as follows**

**"2A. Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	8.6.2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies."

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

**Signed**



**Alex Keller, Principal Planner**

The application is determined on 30/09/2022, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**