

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0066
Responsible Officer:	Ashley Warnest
Land to be developed (Address):	Lot 901 DP 546541, 26 West Street BALGOWLAH NSW 2093
Proposed Development:	Modification of Development Consent DA2019/1317 granted for alterations and additions to a dwelling house
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:	Gaenor Anne Meakes Mark Jonathon Richards
Applicant:	Mark Jonathon Richards
Application Lodged:	25/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/03/2021 to 22/03/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: %
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Modification is sought for development consent DA2019/1317 for the alterations and additions to the existing dwelling house. The proposed modifications are as follows:

- Increase ridge height of the garage from RL66.20 to 66.46
- Simplified garage roof design
- New window along northern elevation of garage
- New stairway to south of existing dwelling house
- Various internal configuration changes

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly 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

SITE DESCRIPTION

Property Description:	Lot 901 DP 546541 , 26 West Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of West Street.</p> <p>The site is regular in shape with a frontage of 17.07m along West Street and a depth of 28.3m.</p> <p>The site has a surveyed area of 565.4m² and a slope of 66.1% that falls from the west to the east.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing elevated two storey rendered brick dwelling house.</p> <p>The rear of the site contains a variety of low lying shrubs and vegetation and several palm trees. The unmade road to the north of the site is heavily vegetated.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Along the eastern side of West Street and adjoining and</p>

surrounding development is characterised by similar elevated two to three storey dwelling houses with the street presence of a single storey dwelling house.

The western side of West Street is characterised by two to three storey residential dwelling houses.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

- Modification Application - MOD2020/0290
Modification of Development Consent DA2019/1317 Alterations and additions to a dwelling house. Determined 23/09/2020.
- Development Application - DA2019/1317
Alterations and additions to a dwelling house. Determined 24/03/2020.
- Development Application - 179/11
Alterations and additions to the existing dwelling house. Determined 18/08/2011.

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 DA2019/1317, 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 proposal will not significantly alter the footprint, built form, or visual appearance of the previously approved dwelling house. When viewed from the public domain or from the neighbouring properties, the dwelling house will have a similar visual impact and appearance to that originally approved.
(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 DA2019/1317 for the following reasons:</p> <ul style="list-style-type: none"> The built form of the dwelling house will remain relatively unchanged by the proposed modification. No additional impacts will arise as a result of the proposal.
<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 2000, Manly Local Environment Plan 2013 and Manly Development Control 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.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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 residential purposes for an extended period of time. The proposed development retains the residential 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 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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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 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&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>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>	<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 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> <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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

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 08/03/2021 to 22/03/2021 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 2 submission/s from:

Name:	Address:
Miss Diane Carolyn Willman	49 Upper Beach Street BALGOWLAH NSW 2093
Mr Paul Davies	19 A West Street BALGOWLAH NSW 2093

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

- **Concerns that the car lift space will be an accessible area or use for and elevated workshop due to the additional height of the garage.**

Comment

The total height of the garage allows for a car hoist to be located within. To ensure the upper portion of the garage is only used for the car hoist and storage a condition of consent will be imposed restricting the use of this space. The incorporation of the window along the northern elevation of the garage does not change the use of this space and will aid in breaking up the bulk of the garage wall.

- **The additional height of the garage will be inconsistent with the existing streetscape.**

Comment

The external finishes to the garage will soften the visual appearance of the addition tying it into the roof form. Parking structures along the eastern side of West Street are predominantly located within the front setback. The proposed garage is taller than similar examples within the vicinity however, utilising the same finishes as the roof the garage will directly tie into roof form. The proposal maintains the existing streetscape.

- **Bulk and scale of the garage has not been minimised.**

Comment

The additional height of 20cm will not result in a significant intensification of the bulk and scale of the garage. The additional height of the garage results from an altered roof design. The new roof form is a simpler design to minimise maintenance requirements. The upper portion of the garage is to be clad in a dark and earthy tone (Monument) to soften the visual impact and create a contrast between the portion of the garage to be retained and the addition.

REFERRALS

No referrals were sent in relation to this application

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 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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	13.2m	unchanged	55.3%	No
Floor Space Ratio	0.45:1	0.43:1	unchanged	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The proposed height of building remains unchanged as part of this modification application. The variation to the height of building requirement has been assessed as part of the original application and considered to be consistent with the relevant objectives. The assessment of the variation as part of the original application is supported on merit.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 8.0m (based on gradient 1:1.2)	12.3m	unchanged	No
	S: 8.0m (based on gradient 1:1.1)	12.6m	unchanged	No
4.1.2.2 Number of Storeys	2	2	unchanged	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.9m	2.1m (garage roof)	Yes
	Pitch: maximum 35 degrees	26 degrees	unchanged	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	consistent with prevailing setback	unchanged	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 4.0m (based on wall height)	1m	unchanged	No
	S: 4.4m (based on wall height)	1m	0.2m to stairs	No
	Windows: 3m	1m	unchanged	No
4.1.4.4 Rear Setbacks	8m	15.6m	unchanged	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	62.1%	unchanged	Yes
	Open space above ground 25% of total open	10.7%	unchanged	Yes

	space maximum			
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	89.3%	unchanged	Yes
	3 native trees	4 trees	unchanged	Yes
4.1.5.3 Private Open Space	18m ²	37.7m ²	unchanged	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	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
3.3.3 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
3.5.5 Landscaping	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)	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	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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)

No changes are proposed to the previously approved height of building arrangement.

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

The provision of the stairway to the south of the existing dwelling will not result in an unreasonable amenity impact. The stairway is predominantly at ground level and is not the primary access point for the dwelling. The stairway provides functional external access to the rear yard for maintenance purposes. The built form of the dwelling house remains unchanged. The modification is within the parameters of the original assessment and is supported on merit.

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 2019

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. Mod2021/0066 for Modification of Development Consent DA2019/1317 granted for alterations and additions to a dwelling house on land at Lot 901 DP 546541,26 West Street, BALGOWLAH, 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
DWG 1219 - 1/5, 2/5, 3/4, and 4/4 - All Rev. E	18/03/2021	Shimdesign

d) 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 1B - Garage Use - to read as follows:

The garage is to only be used for the purposes of storage for vehicles and other items. The space is not

to be used for living or recreational purposes.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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

Signed



Ashley Warnest, Planner

The application is determined on 20/04/2021, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager