

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0623
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 21A DP 350345, 34 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2019/0080 granted for Alterations and additions to a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Luke Anthony Randell Carol Ann Randell
Applicant:	Chrofi

Application Lodged:	09/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/12/2019 to 28/01/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal is for modification of a Development Consent No. DA2019/0080, which was granted for alterations and additions to a dwelling house including a swimming pool.

In particular, the proposal relates to a number of changes to the design of the built form, however the proposed presentation and footprint of the development is substantially the same as what was approved.

The proposal particularity involves the extension of a balcony to the rear of the garage, the addition of

some floor space at ground floor level, redesign of screening and openings on the northern elevation, and the introduction of a flat roof in the south-east part of the site.

A submission has been received from the neighbouring property to the north. The submission raised concerns in relation to privacy, impacts to neighbouring properties and introduction of additional open space.

The application was assessed against the planning controls of the MDCP 2013 and development standards under the Manly LEP 2013, and whilst there are still variations to the setback controls and FSR standard, these have been found to be consistent with the objectives and requirements of the controls and standard (subject to conditions). In this regard, the built form will provide appropriate separation and design to minimise privacy impact, other amenity impacts, and will provide an appropriate visual presentation.

A condition has been imposed to ensure the proposed screening will mitigate potential privacy impacts to the northern neighbour.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on privacy, views or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the application be approved, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify DA2019/0080 in which consent was granted for "alterations and additions to a dwelling house including a swimming pool." In detail, the proposal involves the following:

Ground Floor Level

- Demolishing the rear portion of existing roof
- Relocating lift and corridor
- A new window adjacent to the pool deck
- Increased area for pool deck
- Removal of change room
- Removal wall and add privacy screen
- A full height glazed wall
- Relocation of plant room
- Relocation of laundry
- Reduce floor level

First Floor Level

- A new window and privacy screen to western elevation
- Removal of a screen
- Relocation of a bathroom and addition of a study
- Revised bathroom layout
- Revised full height door and windows

Second Floor Level

- Extension of a wall to stairs at southern elevation
- 1500mm high privacy screen to north side of terrace

- New operable window behind privacy screen to northern elevation
- Add skylight
- New flat pebble roof
- 1500mm high privacy screen to south side of terrace

Studio/Garage

- Extension of balcony with screen
- New roof over existing walkway

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 - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 21A DP 350345 , 34 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Beatty Street.</p> <p>The site is irregular in shape with a frontage of 12.725m along Beatty Street and a depth of 52.2m (northern boundary) and 51.36m (southern boundary).</p>

The site has a surveyed area of 789m².

The site is located within the E3 Environmental Management zone and accommodates a two storey dwelling house of brick construction with a metal roof, located toward the eastern (harbour) end of the allotment. There is a two storey garage/studio structure at the street frontage. An inclinator runs along the southern boundary from street level to the rear of the dwelling. There are also stairs from street level to the garden area below.

The site slopes steeply from Beatty Street down to Forty Baskets Reserve, with the majority of the change in level occurring on the western portion of the site whilst the eastern portion, containing the existing dwelling house, is relatively flat. The total fall is approximately 15.8m.

The site is heavily vegetated between the garage and the dwelling house, primarily with exotic tree species.

The property has an easement for services and a drainage easement running along the southern boundary. There is also a sewer pipe traversing the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining the site to the east is Forty Baskets Reserve, beach and swimming baths.

The surrounding area is characterised by large multi-level dwellings in landscaped settings. Sydney Harbour National Park is situated 200m to the south of the site and Welling Reserve is situated 120m to the north of the site, with both areas of public open space containing bushland.

Map:



SITE HISTORY

Pre-lodgement Meeting (PLM2018/0224)

On 15 November 2018, the proposed development was the subject of a Pre-lodgement meeting. Issues discussed included; non-compliant FSR, inadequate side setbacks, flooding and the stormwater easement traversing the site. It was advised that the proposal presented was not acceptable in the form presented and required some redesign prior to submission, particularly in relation to including a greater side setback to the north, as well as further analysis of potential amenity impact and response to this if required.

Relevant Previous Applications/Approvals:

On 24 July 2011, Development Application No. 10.2011.189.1 was approved for alterations and additions to an existing dwelling including ground and first floor extension, front second floor addition, swimming pool, cabana and landscaping.

On 15 March 2016, Modification Application No. 10.2011.189.2 was approved to modify approved development (changes to windows and doors, new first floor side terrace, pool level, terrace size, roof pitch, inclusion of rear detached outbuilding and modification to roof).

DA10.2011.189.1 (as modified) has been activated.

A Construction Certificate (CC) was issued for demolition and a shed has been demolished in accordance with the Consent and CC.

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 DA2019/0080, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) 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 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 DA2019/0080 for the following reasons:</p> <p>The proposal is for a minor addition of floor space and a number of other changes to the dwelling. These changes do not result in an increase to the overall building height and does not involve any new level, use or ancillary use. As such, the dwelling is substantially the same as the dwelling approved.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/0080 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local

Section 4.55 (2) - Other Modifications	Comments
(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	Environmental Plan 2013 and Manly Development Control Plan.
(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 96 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>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Building Act 1989. This Clause is not relevant to this application.</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 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 application that included a certificate (prepared by BPAD Bushfire Planning & Design, dated 9 October 2018) 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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Lockrey Planning And Development Solutions Pty Ltd	Address Unknown
Symons Goodyer Pty Ltd	PO Box 673 BALGOWLAH NSW 2093

The matters raised within the submissions are addressed as follows:

- **Inaccurate notification plans**

Comment:

It is recognised that the north and south elevation on the notification plan were labelled incorrectly. However, the main set of plans are all labelled correctly and this enables a proper understanding and assessment of the application. Furthermore, the neighbour at 36 Beatty Street identified the mistake and made a submission in this regard and contact has also been made with the southern neighbour (32 Beatty Street) to notify them of the error. As such, the error has been addressed and has ultimately not resulted in any misunderstanding of the application by residents or Council.

- **No nexus for widening the studio deck given the open space already available; potential for overlooking from this area to southern boundary accessway at 36 Beatty Street**

Comment:

The proposed modification complies with the control for total open space above ground. There has also been an assessment under Clause 3.4.2 of the Manly DCP in this report which finds the outcome for privacy is reasonable, subject to conditions. As such, the proposed open space and privacy outcome is reasonable for the site and adjoining properties.

- **Request for new privacy screen at northern side of terrace with height of 1600mm, rather than 1500mm**

Comment:

The terrace complies with the controls for side setbacks and there is no neighbouring open space at the same level as this terrace. As such, the proposed lowering of the screen would still reduce opportunity for downward overlooking. This is a reasonable outcome for privacy mitigation.

- **Privacy issues from second floor to 36 Beatty Street (from new openings)**

Comment:

The proposed operable window at the second floor has a full length privacy screen and is well separated from neighbouring living areas. As such, it will not result in any unreasonable privacy impact. Furthermore, a condition is provided to ensure the design of the privacy screen is appropriate (including minimum width of openings).

- **Removal of wall and replacement with privacy screen results in visual and aural privacy concern; this conflicts with the original approval**

Comment:

Subject to a condition to provide an appropriate design for the privacy screen, the alternative barrier will provide sufficient mitigation of both aural and visual privacy impact.

- **Height, bulk, scale and setback of lift; presentation of lift in Beatty Street**

Comment:

The proposed lift matches the roof level of the existing garage, is to the rear of the existing garage, and is well separated from the neighbouring dwellings. The lift also has a side setback of 3.0m from the southern boundary and this complies with the control of 2.83m. As a result, the proposed lift structure would not have a height, bulk or scale that would cause any unreasonable visual or amenity impact.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposed modification is considered acceptable in relation to landscape issues. Existing conditions are still relevant to the modified consent if approval is granted.
NECC (Bushland and Biodiversity)	The proposed modification has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). The subject site is previously modified with limited remnant native vegetation and wildlife habitat, and the proposed modifications will not significantly increase the potential impacts to biodiversity values. It is considered that, subject to the existing conditions of consent, the proposal is consistent with the objectives of the clause.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13</p>

Internal Referral Body	Comments
	<p>(coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the proposed modification satisfy requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>The subject site is located within/adjacent to the W2 (Environmental Protection) Zones.</p> <p>On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met.</p> <p>Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005</p> <p>Landscape character Assessment</p> <p>The subject site is located within the Landscape Character Type 6.</p> <p>On internal assessment, it is determined that the proposed modifications within the landscape satisfy the relevant criteria.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>No issues identified.</p> <p><u>Assessing officer comment</u></p> <p>The recommended condition which restricts works on the public beach was placed on the original consent and remains.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The application proposes modifications to DA2019/0080. The modifications comply with Council's Flood Prone Land Controls. There are no recommended changes to flood-related conditions placed on original DA.
Parks, reserves, beaches, foreshore	No issues with the proposed modifications.
Property Management and Commercial	The proposal is for the modification of a previously approved development consent on the subject site. Property has no objections to the proposal as submitted.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A336749_02).

A condition from the original consent remains, requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposal will not result in adverse impacts on the issues identified in (a) to (g).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

There are not adverse impacts that would preclude consent.

14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse*

impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not have an unreasonable impact on the coastal use area.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.es

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal is unlikely to cause increased risk of coastal hazards. The application has been referred to Council's Coastal Officer who raises no objections to the proposal.

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	9.14m	9.14m (dwelling) 8.5m (lift)	N/A	No (but as approved) Yes.
Floor Space Ratio	FSR: 0.4:1	FSR: 0.53:1	FSR: 0.55:1	38.1%	No (see comments)

	(315.6m ²)	(418m ²)	(436m ²)		
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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
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

Whilst the modification application will result in a Floor Space Ratio that further exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted to a development application, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation is made as follows:

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor Space Ratio’ of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character

Comment:

The proposal maintains side setbacks as well as appropriate modulation of building bulk through separated building form across the site. The additional floor space relates to a plant room and laundry at the ground floor level, down slope from the street. As such, the proposal maintains an appropriate bulk and scale within the street.

The development satisfies this objective.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features

Comment:

The proposal involves additional floor space at ground level and predominantly within the existing building footprint. This does not involve an increase in bulk or density that could lead to obscuring landscape or townscape features.

The development satisfies this objective.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area

Comment:

The proposal maintains a similar presentation of building bulk and complies with the controls for open space and landscaping. As such, the proposal will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

The development satisfies this objective.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain

Comment:

The proposal involves the addition of floor space at ground level and does not involve any associated openings. As a result the proposed areas would not result in any unreasonable impact in terms of the environment or amenity.

The development satisfies this objective.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres

Comment:

Not applicable

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development

Comment:

In this circumstance, providing flexibility to the Floor Space Ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances

Comment:

It is appropriate to allow flexibility in this circumstance as an addition in Floor Space Ratio can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 789m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North: 7.2m	7.5m	7.5m	No (but as approved)
	South: 7.5m	6.1m	6.1m	No (but as approved)
4.1.2.2 Number of Storeys	2	2-3	2-3	No (but as approved)
4.1.2.3 Roof Height	Height: 2.5m	0.7m	0.7m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6.0m	Nil (existing garage)	Nil (existing garage)	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 1.7m - 2.5m	1m-2.2m	1m (privacy screen)	No (see comments)
	South: 1.1m - 2.0m	1.525m-3.22m	1.525m (new flat roof)	No (see comments)
	Lift shaft: 2.4m (south)	1.5m	3m	Yes
4.1.4.4 Rear Setbacks	8.0m	4.5m - 5.3m	4.5m-5.3m	No (but as approved)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space	Open space 60% of site area	73.4% (578sqm)	74% (583sqm)	Yes

Area: OS4				
4.1.5.1 Total Open Space Above Ground	25% (145.75sqm)	13.5% (78sqm)	15.5% (90sqm)	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	40%	40%	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	>18sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Ground level	Ground Level	Yes
	1m curtilage/1.5m water side/rear setback	1.0m (north side)	1.0m (north side)	No (but as approved)
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	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	No	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
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposal maintains appropriate screening (subject to conditions) and appropriate physical separation from neighbouring living spaces to sufficiently minimise loss of privacy. In particular, the new areas of open space are well separated from neighbouring living spaces and new openings are appropriately separated or screened.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

In order to ensure the proposed privacy screens at the northern elevation provide an appropriate balance between providing appropriate levels of privacy (as well as access to light and air), a condition is recommended which restricts the total openings of the screens at the northern elevation. The condition recommended is as follows:

The proposed privacy screens at the northern elevation (5, 17 and 20) are to meet the following:

- **have no individual opening more than 30 millimetres wide; and**
- **have a total area of all openings that is no more than 30 per cent of the surface area of the screen or barrier**

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure the proposed privacy screens do not have openings that would give rise to unreasonable opportunity for overlooking and aural privacy impact.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal maintains windows and entry areas which sufficiently contribute to potential for awareness of neighbourhood security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

The proposal involves replacement of the approved wall adjacent to the pool with a privacy screen. This screen is located 1.0m from the boundary which is the same as the existing wall but which does not comply with the control of 2m at this part of the building.

The proposal also involves a new flat roof which extends the southern boundary to be 1.525m from the side boundary. This is a greater setback than the approved roof but still does not comply with the control of 2m.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street

Comment:

The proposed screen and flat roof are located down slope and away from the street. As a result, the addition of these features will not have any unreasonable visual impact on the streetscape and the landscape character of the area will be suitably maintained.

Objective 2) To ensure and enhance local amenity by:

- ***providing privacy;***
- ***providing equitable access to light, sunshine and air movement; and***
- ***facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.***
- ***defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and***
- ***facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection***

Comment:

The proposed privacy screen is in the same location as the approved wall and will maintain a suitable level of privacy (subject to a condition which restricts the amount and width of openings). This location and design will also ensure appropriate opportunity for light, air and other amenity for the subject site and neighbouring property.

The proposed flat roof at the southern boundary is set further back than the approved pitched roof and is well separated from neighbouring living spaces. This ensures that appropriate access to amenity for the southern neighbour is maintained.

Objective 3) To promote flexibility in the siting of buildings

Comment:

The proposed privacy screen and new flat roof are in locations which are within the approved building envelope. This is a siting which maintains an appropriate presentation of bulk and scale, and does not give rise to any further unreasonable amenity impact.

Objective 4) To enhance and maintain natural features by:

- ***accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;***
- ***ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and***
- ***ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied***

Comment:

The proposal maintains landscaped area that complies with the control under the Manly DCP and the additions are predominantly within the existing footprint. As such, natural features will be appropriately maintained.

Objective 5) To assist in appropriate bush fire asset protection zones

Comment:

A bush fire report has been provided and remains as reference documentation for the consent.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) 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 effect 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

Conclusions on the Assessment of the Application

The proposed development does not comply with the 'Floor Space Ratio' Development Standard of 0.4:1 under the MLEP 2013, involving an additional breach (18.0m² additional gross floor area) of the development standard. However, the further breach does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and the height standard.

In this case, the proposed dwelling provides a design that involves sufficient modulation and sufficient physical separation from neighbours. A condition is recommended to ensure a balanced outcome in design for privacy and access to other amenity. Furthermore, an assessment against the objectives of the development standards and DCP controls has found the proposal to be consistent with those provisions and reasonable.

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. 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. Mod2019/0623

for Modification of Development Consent DA2019/0080 granted for Alterations and additions to a dwelling house including swimming pool on land at Lot 21A DP 350345,34 Beatty Street, 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:

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
DA-002- Site Plan	Issue C - 9/12/19	Chrofi
DA-004- Ground Floor Demolition Plan	Issue B - 9/12/19	Chrofi
DA-005- First Floor Demolition	Issue B - 9/12/19	Chrofi
DA-006- Roof Level Demolition Plan	Issue B - 9/12/19	Chrofi
DA-008- Cut and Fill Plan	Issue B- 9/12/19	Chrofi
DA-101- Ground Floor Plan	Issue B - 9/12/19	Chrofi
DA-102- First Floor Plan	Issue B - 9/12/19	Chrofi
DA-103- Second Floor Plan	Issue B - 9/12/19	Chrofi
DA-104- Existing Studio Plan	Issue B - 9/12/19	Chrofi
DA-105 -Existing Garage Plan	Issue B - 9/12/19	Chrofi
DA-106-Roof Plan	Issue C - 9/12/19	Chrofi
DA-201- Elevations	Issue C - 9/12/19	Chrofi
DA-202- Elevations	Issue C - 9/12/19	Chrofi
DA-301- Sections	Issue B - 9/12/19	Chrofi
DA-302- Sections	Issue B - 9/12/19	Chrofi

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No.	Dated	Prepared By
DA-007 Waste Management Plan	9/12/19	Chrofi

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition 13A - Design for Privacy Screens to read as follows:

The proposed privacy screens at the northern elevation (5, 17 and 20) are to meet the following:

- have no individual opening more than 30 millimetres wide; and
- have a total area of all openings that is no more than 30 per cent of the surface area of the screen or barrier

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure the proposed privacy screens do not have openings that would give rise to unreasonable opportunity for overlooking and aural privacy impact.

C. Add Condition 28 - Design Impact on Coastal Processes and Public/Private Amenity to read as follows:

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private