

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0776
----------------------------	--------------

<b>Responsible Officer:</b>	Clare Costanzo
<b>Land to be developed (Address):</b>	Lot B DP 104229, 64 Fairlight Street FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1092 granted for alterations and additions to a dwelling house including swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General 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>	Ian Alexander Donaldson Lucy Katherine Susan Shepherd
<b>Applicant:</b>	MM+J Architects Pty Ltd

<b>Application Lodged:</b>	12/10/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	26/10/2021 to 09/11/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 12.9% 4.4 Floor space ratio: 16.6%
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of modifications to approved development application DA2019/1092. The following works are proposed as part of the modification:

- Reduction in size of Window 1 and Window 8.
- Deletion of the approved swimming pool within the front setback.
- New large water feature in place of swimming pool.
- Modifications to seating area approved within the front setback including a gas fireplace.
- Modifications to the approved external works including changes to landscaped area arrangement.
- New pergola structure above existing rear deck.
- Relocation of water and gas meters to front setback.

- Removal of an existing tree within the rear yard.

## 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 Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

## SITE DESCRIPTION

<b>Property Description:</b>	Lot B DP 104229 , 64 Fairlight Street FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the southern side of Fairlight Street, Fairlight.</p> <p>The site is regular in shape with a frontage of 11.035m along Fairlight Street and a depth of 21.335m. The site has a surveyed area of 235.5m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey dwelling and a hard stand car parking space.</p> <p>The site sits below the street but is relatively flat.</p>

The site has minimal vegetation with a small area of lawn at the front.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by one to two storey residential dwellings and multi storey residential flat buildings.

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:

##### **BC2018/0157**

Timber decking and awning at front of the property, timber decking to the side and rear of the property, hardstand car space and timber stairs was determined on the 16 October 2018.

##### **PLM2019/0117**

A Pre-lodgement Meeting was held on 20 June 2019 for alterations and additions to a dwelling house. In the meeting and accompanying notes, the applicant was advised that Council would not support the proposed attic conversion as it did not meet the requirements of the MLEP and MDCP. The application as lodged amended the proposal in response to Council's comments.

##### **DA2019/1092**

Development application for alterations and additions to a dwelling house including a swimming pool was approved by the Northern Beaches Development Determination Panel on the 5 February 2020.

#### **Subject Application History**

The subject modification was lodged as a Section 4.55(2) to modify DA2019/1092. The modification included minor modification to approved works and the construction of a new carport over the existing hardstand. Following preliminary assessment Council advised the applicant that the construction of the carport could not be supported as a modification and would need to be assessed under the cover of a separate development application. The applicant subsequently amended the plans to remove the carport from the modification and requested the modification to be changed to a Section 4.55(1a). The application has been assessed as a Section 4.55(1a) and therefore can be determined under delegation.

Re-notification for the modification application was not required in line with the Northern Beaches Community Participation Plan

### 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 DA2019/1092, 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><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>• Approved built form generally remains unchanged</li> <li>• The works are minor and will not seek any changes to the approved floor area or building height</li> <li>• It is not expected there will be any environmental impacts above those considered in the original development application.</li> </ul>

Section 4.55(1A) - Other Modifications	Comments
(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 DA2019/1092 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modified works relate to elements of the approved development application.</li> <li>• The proposed carport has been deleted</li> <li>• It is not expected there will be any environmental impacts above those considered in the original development application.</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, 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>	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.
(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



Section 4.15 'Matters for Consideration'	Comments
	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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans.</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> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment	<p>(i) <b>Environmental Impact</b></p> <p>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>

Section 4.15 'Matters for Consideration'	Comments
and social and economic impacts in the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/10/2021 to 09/11/2021 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 1 submission/s from:

Name:	Address:
Mr Vivian Cecil Dirckze Mrs Irena Helena Dirckze	19 Hilltop Crescent FAIRLIGHT NSW 2094

The matters raised within the submission are addressed as follows:

- **Stormwater Management**

Comment:

A submission was received during the notification period raising potential issues with stormwater management and run off from the approved and modified development.

Stormwater management was considered in the assessment of the original development application DA2019/1092 and the approval of the application by Council's Development

Determination Panel. A condition was included in that consent requiring the stormwater drainage works to be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are also required to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

The condition is inclusive to the modification to the development consent and therefore all works as part of this modification must comply with relevant Australian Standards and Codes. Stormwater will be managed in accordance with the approved stormwater plan. The proposed pergola is not considered to result in any unreasonable additional stormwater runoff given its modest size, setbacks and construction over an existing hard surface area.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to the development consent DA2019/1092 for alterations and additions to a dwelling house including a new swimming pool.</p> <p>The modification application seeks to delete the approved swimming pool within the front setback, include a new carport structure above existing at-grade car space, and modify the approved external works including expanded and adapted seating area with a gas fire and large water feature within the front setback, with changes to the landscaped area design, new pergola structure above existing rear deck, relocation of water and gas meters to front setback and other minor changes to the approved plans.</p> <p>Landscape Referral raise no concerns with the proposed landscape outcome provided by the updated landscape proposal.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.

## 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. A353081\_04 dated 27 October 2021).

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

### 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 changes	12.9% (no changes)	N/A
Floor Space Ratio	FSR: 0.6:1 or 141.3m <sup>2</sup>	FSR: 0.7:1 or 164.85m <sup>2</sup>	no changes	16.6% (no changes)	N/A

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
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

In '*Gann v Sutherland Shire Council [2008] NSWLEC 157*', the NSW Land and Environment 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.

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 or Clause 4.6, relying instead on the "free-standing" power of Section 4.55,

In this regard 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 a building height greater than that permitted by Clause 4.3 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 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 is 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.

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 have been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under the MLEP 2013 and the variation can be supported.

The modification application seeks works above the 8.5m maximum building height, however does not seek to change the approved maximum height. The external bulk, scale and roof form of structure are considered to be unchanged as a result of the works above the maximum height control. 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 and the departure from the development standard is supported in this instance.

#### **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.

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 or Clause 4.6, relying instead on the "free-standing" power of Section 4.55,

In this regard 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 a building height greater than that permitted by Clause 4.3 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 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 is 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.

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 have been assessed and found that the development satisfies the underlying objectives of Clause 4.4 Floor Space Ratio under the MLEP 2013 and the variation can be supported.

The modification application does not seek to increase the approved floor area. The external bulk, scale and roof form of structure are considered to be unchanged. 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 and the departure from the development standard is supported in this instance.

Although the development application DA2019/1092 did not comply with Clause 4.4 Floor Space Ratio of the MLEP 2013 a Clause 4.6 was provided and approved. The modification seeks external modifications to the dwelling and does not propose any changes to the approved floor area. No further assessment required.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 235.5m <sup>2</sup>	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 6.5m	8.8m (existing)	no changes	No
	S: 6.5m	8.1m (existing)	no changes	No
	E: 6.5m	5.2m (existing)	no changes	Yes
	W: 6.5m	8.5m	no changes	No
4.1.2.3 Roof Height	Height: 2.5m	4.12m	no changes	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	addition: 6.9m, consistent with prevailing setback Swimming pool: 1m	no changes to dwelling deletion of swimming pool	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.9m W: 3m	4.2m 0.7m	no changes	Yes No
	Windows: 3m	W: 0.795m	no changes	No
4.1.4.4 Rear Setbacks	8m	5.1m	0.6m	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	41.64% (98.06m <sup>2</sup> )	no changes	No
4.1.5.2 Landscaped Area	Landscaped area 35% (34.321m <sup>2</sup> ) of open space	35.12% (34.44m <sup>2</sup> )	no changes	Yes
	1 native trees	0 trees	no changes	No
4.1.5.3 Private Open Space	18sqm	25.2sqm	no changes	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	2.8m	no changes	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	no changes	No

## Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	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)**

The proposed modification does not comply with the maximum height of buildings (see Clause 4.3 'Height of Buildings' for further discussion).

#### 4.1.3 Floor Space Ratio (FSR)

The proposed modification does not comply with the maximum floor space ratio (see Clause 4.4 'Floor Space Ratio' for further discussion).

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

##### Description of non-compliance

The proposal retains existing approved front and side setbacks. However there is a new pergola proposed within the rear of the site which presents a non compliance to the required setback of 8m. Given the existing site constraints compliance with this control is not considered to be necessary if there are no unreasonable impacts on surrounding sites. A merit assessment has been conducted below.

##### 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

Existing front setback is retained. Some landscaping changes are proposed as part of the application to enhance the site when viewed from Fairlight Street.

***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 pergola covering a portion of the north eastern rear decking is a modest open structure that is not expected to result in any unreasonable amenity impacts. The modest height is not expected to result in any overshadowing or view loss.

***Objective 3) To promote flexibility in the siting of buildings.***

##### Comment

The small nature of the site and constraints of the existing dwelling rely on flexibility for the siting of the pergola.

***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 pergola will not result in the removal of any trees or vegetation.

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

#### Comment

The site is not located within a bushfire asset protection zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

#### **4.1.5 Open Space and Landscaping**

The existing development and site constraints limit the potential for full compliance with this control. The proposal is generally consistent with the approved open space and landscaped area and therefore no further assessment is deemed necessary.

#### **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 inconsistent with the principles of Crime Prevention Through Environmental Design.

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2021**

Section 7.12 contributions were levied on the Development Application.

#### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;

- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0776 for Modification of Development Consent DA2019/1092 granted for alterations and additions to a dwelling house including swimming pool on land at Lot B DP 104229,64 Fairlight Street, FAIRLIGHT, 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
DA02 Site Plan - Rev E	16 December 2021	MM+J Architects
DA06 Ground Floor Plan - Rev A	16 December 2021	MM+J Architects
DA07 First Floor Plan - Rev E	16 December 2021	MM+J Architects
DA08 Second Floor Plan - Rev H	16 December 2021	MM+J Architects
DA09 Sections - Rev G	16 December 2021	MM+J Architects
DA10 Elevations - Rev K	16 December 2021	MM+J Architects

Schedule of exterior finishes and colours	16 December 2021	MM+J Architects
---	------------------	-----------------

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A353081_04	27 October 2021	MM+J Architects

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
L.SK.01 Landscape Sketch Plan - Rev H	23 September 2021	Scape Design
L.SK.02 Landscape Planting Plan - Rev G	23 September 2021	Scape Design

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

#### **B. Add Condition 14A 'Stormwater Disposal' to read as follows:**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY. Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

#### **C. Add Condition 20A 'Landscape Completion' to read as follows:**

Landscape works shall be implemented in accordance with the approved Landscape Plans L.SK.01 revision H and L.SK.02 revision G.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental Amenity.

#### **D. Delete Condition 19 Swimming Pool Requirements which reads as follows:**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008

- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools
- (b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.
- (c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.
- (d) A warning sign stating 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL' has been installed.
- (e) Signage showing resuscitation methods and emergency contact
- (f) All signage shall be located in a prominent position within the pool area.
- (g) Swimming pools and spas must be registered with the Division of Local Government.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life

**E. Delete Condition 21 Swimming Pool Equipment which reads as follows:**

The swimming pool equipment that is capable of generation noise such as the swimming pool pump, is to be located within an acoustic box and shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure the proposal complies with the Protection of the Environment Operations Act 1997.

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

**Signed**



**Clare Costanzo, Planner**

The application is determined on 10/01/2022, under the delegated authority of:



**Tony Collier, Acting Development Assessment Manager**