

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0509
----------------------------	--------------

Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 20 DP 758044, 1 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2020/0077 granted for demolition works and construction of 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:	Kevin Scott Mooney
Applicant:	Kevin Scott Mooney

Application Lodged:	22/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/08/2021 to 18/08/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: % 4.4 Floor space ratio: 0.8%%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

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

- Increase the size of the ensuite and walk in robe to align with the main wall of the bedroom, beneath approved roof form
- Reconfigure walk in robe layout and provide a bath within enlarged ensuite space
- Extend approved clerestory westwards by 2.05m and 4.35m in width at the approved RL

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 - 3.4.3 Maintenance of Views

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)

SITE DESCRIPTION

Property Description:	Lot 20 DP 758044 , 1 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The land is 753.8m² in area and is located on the north western corner of Tabalum Road and Cutler Road. The site has a frontage of 18.29m to Tabalum Road and an arc frontage of 35.05m to Cutler Road. There is a splay corner affecting the site (at the intersection of Tabalum Road and Cutler Road).</p> <p>The land falls quite steeply from the Tabalum Road frontage at RL76.66 centrally to the rear boundary abutting No.6 Cutler Road at RL72.0 at the pool area. There is a retaining wall adjacent to the boundary with No.6 Cutler Road. The level at the base on the abutting property being approximately RL68.18.</p> <p>The site contains a three storey (with attic) brick detached dwelling house with a rear swimming pool located off the Cutler Road frontage.</p> <p>Vehicular access to a three car garage at the lower house</p>

level is located off Cutler Road. Access to an additional covered car parking space is available from Tabalum Road adjacent to the house entry. Surrounding development consists of low density detached housing and Sydney Harbour National Park is adjacent the site to the east.

The site is subject to bushfire hazard zone and is in a location where broad views of the Harbour area (toward Sydney Heads and Sydney CBD) are available from the site and surrounding land. From various vantage positions, views to the south, west and north are also available from surrounding land (and the site) due to the ridgeline topography.

There are no significant trees or unique rock outcrops.

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:

- DA2020/0077 Demolition works and construction of a dwelling house was approved by the Northern Beaches Planning Panel on the 13 November 2020

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0077, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(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"> • It is not expected there will be any environmental impacts above those considered in the assessment of DA2020/0077 • The proposed modifications are minor and will mostly retain the built form as approved • The works are substantially the same as those already 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 DA2020/0077 for the following reasons:</p> <ul style="list-style-type: none"> • It is not expected there will be any environmental impacts above those considered in the assessment of DA2020/0077 • The proposed modifications are minor and will mostly retain the built form as approved
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require,	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the

Section 4.55(1A) - Other Modifications	Comments
or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	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.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)(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)	<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. <u>Clause 50(1A)</u> of the EP&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.

Section 4.15 'Matters for Consideration'	Comments
	<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 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><u>Clause 143A</u> of the EP&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 and social and economic impacts in the locality	<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>
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 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 Building Code & Bushfire Hazard Solutions, dated 8 July 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/08/2021 to 18/08/2021 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 of the application Council received no submissions.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1040129S_05 dated 7 July 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	max height of modified works 9.3m	3%	No
Floor Space Ratio	FSR: 0.4:1	FSR: 0.398:1	FSR: 0.403:1	1.2%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

A clause 4.6 was provided and approved as part of DA2020/0077. A maximum building height of 9.6m was approved in the previous application. Although the approved development did not comply with the maximum building height control, the modification application does not seek to change the maximum approved building height.

An assessment of the height intensification of the central part of the dwelling against the objectives of 4.3 Height of Buildings. The underlying objectives of the standard, pursuant to Clause 4.3 - 'Height of

Buildings' of the MLEP 2013 are:

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

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

The dwelling will continue to be viewed as below the 8.5m height control when viewed directly from Tabalum Road frontage and therefore the building height will continue to be acceptable with regard to the streetscape when viewed in the context of the adjacent dwellings. The central location of the clerestory extension also minimises its visual impact when viewed from surrounding sites.

The height breach of the clerestory extension is a result of the sloping topography of the site to the west. This extension will continue the flat roof form of the approved dwelling and is compatible with the design of the approved dwelling.

(b) to control the bulk and scale of buildings

The approved dwelling included the use of balcony elements, landscaping, changes in wall material and variable setbacks to break up the building bulk. These elements are retained as part of the modification application. The approved clerestory element provides visual interest and internal amenity for the residents. The combination of materials and glazed elements will mitigate the bulk of the structure. The minor extension is located centrally to the dwelling and will continue to maintain the stepped design of the dwelling.

It is considered the proposal is consistent with this objective.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores)*

The proposed clerestory extension will not result in any unreasonable loss of views to the south west towards Middle Harbour and the City skyline. View loss is discussed further in 3.4.3 Maintenance of Views. The site is not in a location where principal public view lines are gained across the site from a public space (beach/lookout or similar). It is considered the proposed building height variation remains consistent with this objective.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

The central location of the clerestory extension will not result in any overshadowing above that considered in the original development application. It is considered that the proposed building height variation maintains consistency with this objective.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The dwelling is adjacent to a lookout point and carport. The modification will not result in any adverse impacts such as overshadowing or obstructing public harbour views on recreational land or exiting vegetation of the adjacent National Park. It is considered that the proposed height variation maintains consistency with this objective.

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

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

Whilst this modification application will result in a floor space ratio greater than that 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 EP&A Act, which is a free standing provision in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 subject to its own stand-alone tests (such as the 'substantially the same' test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

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 has 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 seeks a proposed FSR of 0.403:1 (303.91m² gross floor space), which results in a 2.78m² increase to the FSR approved under Development Application DA2020/0077. Whilst the modified development results in an overall breach to the Development Standard of 0.8%, and is generally the result of the small new areas of floor space for the ensuite and walk in robe extension.

The external bulk, scale and roof form of the modified structure are considered as generally acceptable, and the minor increase in floor space does not affect the overall shape of the building, or any external environmental impacts. In this regard, Council can be satisfied that the modified development is substantially the same development as previously approved. No assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 753.8m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 8m (based on gradient 4.6:1)	7.8m	no changes	N/A
	S: 8m (based on gradient 4.6:1)	8.2m	no changes	N/A
	E: 8m (based on gradient 4.6:1)	6.8m	no changes	N/A
	W: 8m (based on gradient 4.6:1)	7.8m	no changes	N/A

4.1.2.2 Number of Storeys	2	3	3	N/A
4.1.2.3 Roof Height	Height: 2.5m	1.3m	1.3m	Yes
	Parapet Height: 0.6m	0.4m	0.4m	Yes
	Pitch: maximum 35 degrees	0 to 1 degrees	0 to 1 degrees	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	no changes	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.6m (based on wall height)	North: 2.2m to 3.6m West: 10m	no changes	N/A
	Windows: 3m	North: 4.9 to 5.9m West: 15.2m	no changes	N/A
	Secondary street frontage: Prevailing setback	consistent with prevailing setback	no changes	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 60% of site area	548sqm or 75%	no changes	N/A
	Open space above ground 40% of total open space	45sqm or 14.8%	no changes	
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	395sqm or 52%	no changes	N/A
	3 native trees	3 trees	no changes	N/A
4.1.5.3 Private Open Space	18sqm	262sqm	no changes	N/A
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m	no changes	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	no changes	N/A

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	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Performance, and Water Sensitive Urban Design)		
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	N/A	N/A
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)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

The proposal seeks to reinstate the clerestory roof extension on Level 3 of the approved dwelling. The adjoining dwelling at 3 Tabalum Road currently enjoys views to the south west towards Middle Harbour and the City skyline.

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning

principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The adjoining dwellings currently enjoy Middle Harbour water views and the city skyline. The view is considered to be highly valued given the unobstructed water views available.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

Views towards Middle Harbour and the City skyline are obtained from the western balcony of the adjoining dwelling. These views are enjoyed from a standing and a sitting position. The proposed clerestory extension will not obstruct the south western views available.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

The proposed clerestory extension is considered to have a negligible impact on the view enjoyed by the adjoining dwelling. Expansive views towards Middle Harbour and the City skyline will remain available as shown in Figure 1 and 2 below.



Figure 1: View looking south west from adjoining dwelling at 3 Tabalum Road, Balgowlah Heights

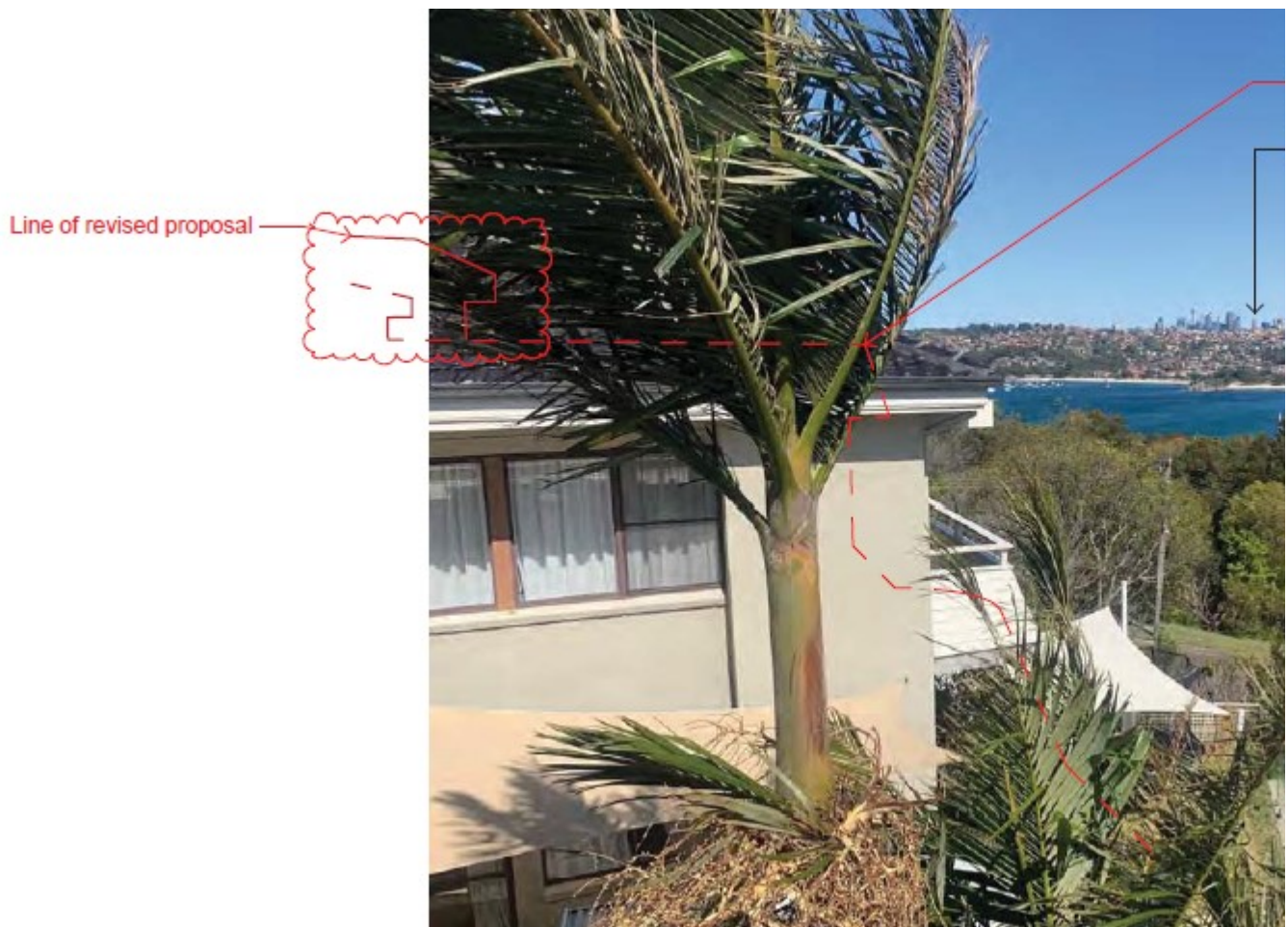


Figure 2: View looking south west with proposed clerestory extension bubbled

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The extension to the approved clerestory is not expected to result in any unreasonable impacts and the view loss is considered negligible given the retention of water views towards Middle Harbour and the City skyline remain available for the adjoining dwelling at 3 Tabalum Road.

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.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

A clause 4.6 was provided and approved as part of DA2020/0077. A maximum building height of 9.6m was approved in the previous application. Although the approved development did not comply with the

maximum building height control, the modification application does not seek to change the maximum approved building height.

The proposed clerestory extension is not expected to have any unreasonable amenity impacts on the surrounding sites and is compatible with the built form of the approved development. 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 4.4 Floor Space Ratio for further discussion.

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 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. Mod2021/0509 for Modification of Development Consent DA2020/0077 granted for demolition works and construction of a dwelling house on land at Lot 20 DP 758044,1 Tabalum Road, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

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
A00 Cover Page RevA	21 June 2021	Legend Design Studio
A01 Site Plan RevA	21 June 2021	Legend Design Studio
A02 Site Analysis Plan RevA	21 June 2021	Legend Design Studio
A05 Garage RevA	21 June 2021	Legend Design Studio
A07 Level 2 RevA	21 June 2021	Legend Design Studio
A09 Roof Plan RevA	21 June 2021	Legend Design Studio
A10 Section A RevA	21 June 2021	Legend Design Studio
A11 Section B RevA	21 June 2021	Legend Design Studio
A13 South (Cutler RD Streetscape) Elevation RevA	21 June 2021	Legend Design Studio
A14 West Elevation RevA	21 June 2021	Legend Design Studio
A15 North Elevation RevA	21 June 2021	Legend Design Studio
A17 Area Calculations RevA	21 June 2021	Legend Design Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment to Support Modification	24 June 2021	White Geotechnical Group
Stormwater Design Certificate	12 July 2021	Northern Beaches Consulting Engineers Pty Ltd

Bushfire Addendum Report	8 July 2021	Building Code & Bushfire Hazard Solutions
Arborist Statement to Support Modification	29 June 2021	Hugh the Arborist
BASIX Certificate No. 1040129S_05	7 July 2021	Efficient Living Pty Ltd

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

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

Signed



Clare Costanzo, Planner

The application is determined on 11/10/2021, under the delegated authority of:



Rebecca England, Acting Development Assessment Manager