

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0625
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<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot C DP 302957, 107 Griffiths Street BALGOWLAH NSW 2093
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1310 for Demolition works, construction of an attached dual occupancy and subdivision into two allotments
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Harrington Nominees Pty Ltd
<b>Applicant:</b>	Grant Harrington

<b>Application Lodged:</b>	20/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	31/08/2021 to 14/09/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks to obtain retrospective approval for the minor increase maximum RL levels of the dual occupancy. The building height increase is a direct result of the 230mm increase in the height of the concrete slab in order to satisfy Sydney Water requirements to ensure that the section 73 certificate could be issued.

The increase in height contributes to a minor increase in the wall height. Otherwise, there is no change to the building footprint, floorplan layout, windows/door opening or landscape open space areas.

### 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 Development Control Plan - 3.1.1 Streetscape (Residential areas)

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

## SITE DESCRIPTION

<b>Property Description:</b>	Lot C DP 302957 , 107 Griffiths Street BALGOWLAH NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Griffiths Street. The site is a corner lot with a frontage to Condamine Street.</p> <p>The site is regular in shape with a frontage of 13.5m along Griffiths Street, 36.5m along Condamine Street and a depth of 36.5m. The site has a surveyed area of 494.1m<sup>2</sup>.</p> <p>The site has a minor slope from the north-east corner to the south-western corner.</p> <p>The street frontage consists of tall canopy trees within the road reserve along Condamine Street which are identified as local heritage items. The street trees along Griffiths Street are also identified as Local Heritage Items. There is no heritage trees on the road reserve directly in front of the subject site along Griffiths Street.</p> <p>The site currently under construction for a dual occupancy.</p> <p>Adjoining and surrounding development is characterised by detached single and two storey dwellings, two storey residential flat buildings and some attached dwellings.</p>

Immediately to the east is a two storey dwelling. To the south is a double storey brick duplex. Across the road is a single storey semi-detached dwelling. The Stocklands is diagonally across the road (Condamine Street) from the subject site which consists of a shopping precinct and multistorey residential apartments.

Map:



## SITE HISTORY

A search of Councils records revealed the following relevant development applications:

- **DA 1/2012** for the demolition of existing single garage, construction of a double garage and access stairs, approved by Manly Council 11 April 2012.
- **DA 1/2012 S96(1A)** - to modify approved demolition of existing single garage, construction of a double garage and access stairs - involving deletion of condition ANS04 in relation to garage setback, approved by Manly Council 14 August 2015.
- **PLM2018/0178** - Meeting held at Northern Beaches Council on 23 August 2018 to discuss demolition works and construction of a dual occupancy.
- **DA2019/0429** application for the demolition and construction of a dual occupancy and subdivision application was withdrawn on 1 August 2019.
- **DA2019/1310** for the demolition works, construction of a Dual Occupancy (attached) and subdivision into two lots was approved on the 12 March 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 DA2019/1310, 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> <p>The proposed changes maintain the approved use and do not alter the intent of the lot to be developed.</p> <p>The approved bulk and scale of the building remains generally consistent with the consent as approved. The minor amendments to the approved dwelling height are minor with no additional impacts. The design revisions are confined within the volume of the structure as originally approved with the physical appearance of the structure remaining consistent with the original approval.</p>
(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	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 DA2019/1310.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has</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.



Section 4.55(1A) - Other Modifications	Comments
made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

### Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly 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>Clauses 54 and 109</u> of the EP&amp;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&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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
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

## 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 31/08/2021 to 14/09/2021 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.

## 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
Minimum subdivision lot size:	250sqm	Lot 1: 247.2sqm Lot 2: 247.2sqm	No Change	1.1%	No*
Height of Buildings:	8.5m	7.5m Ground Floor RL 26.990 First Floor RL 30.090 Upper Roof RL	7.9m Ground Floor RL 27.4 First Floor RL 30.338 Upper Floor RL	-	Yes

		34.140	34.420		
Floor Space Ratio	FSR: 0.6:1	Lot 1: FSR: 0.58:1 Lot 2: FSR 0.58:1	No Change	-	Yes

*\*Variation to the minimum Lot size previously approved via DA2019/1310.*

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

#### **Mainly Development Control Plan**

##### Built Form Controls

4.1.2.1 Wall Height	E: 7m	6.1m	6.4m	Yes
	W: 6.8m	6.8m	6.95m 2% variation	No
4.1.2.3 Roof Height	Height: 2.5m	1.2m	No Change	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
3.4.3 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
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

##### **3.1.1 Streetscape (Residential areas)**



The DCP requirements and objectives, pursuant to Clause 3.1.1 Streetscape (Residential area), including sections 3.1.1.1 to 3.1.1.5, are addressed as follows:

Merit Assessment Comments:

The modified proposal is required to be consistent with *Complementary Design and Visual Improvement design outcomes* including streetscape considerations for setbacks, materials and built form. As outlined in the built form controls table, the minor increase in building height, and variation to the western external walls of the dwelling are consistent with the DCP requirements and have acceptable materials in conjunction with articulation along wall planes to address visual impact on the street and adjacent land.

The modified wall heights have been varied due to the sloping site, with the continued use of landscaping, window fenestration and other elements (such as balconies, openings) assist to ensure no unreasonable impacts of bulk.

In consideration of the corner presentation to Griffiths Street and Condamine Street the building has a very minor higher profile, however the modified proposal continues to present as 2 storey (with a flat roof form) with a clerestory roof feature. The dwelling profile when viewed from Griffiths Street and Condamine Street continues to be consistent with adjacent houses on the same side of the road as the subject site. The modified proposal does not create an unreasonable impact on surrounding land and is consistent with the pattern of surrounding development on similar sloping positions.

No issue is raised with respect to clause 3.1.1.5 for the bin storage area as this is concealed from view as part of the garage excavation.

Having regard to the above assessment, and objectives of this clause it is concluded that subject to conditions the proposed development is consistent with the 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)**

Description of non-compliance

The building height increase as a direct result of the 230mm increase in the height of the concrete slab in order to satisfy Sydney Water requirements, gives rise to a 2.2% variation to the western wall height, being 6.95m where the requirement is 6.8m.

The modified proposal complies with controls relating to building height and number of storeys; such matters will therefore not be discussed further.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the objectives of the control. The control relies upon the objectives specified within Clause 4.3 of the Manly LEP 2013.

*(1) (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,*

Comment:

The roofline of the dwelling house sits under the 8.5m statutory height limit and remains consistent with the desired building height envisaged for the site. The form and scale of the proposed dwelling is commensurate to established residential development along Peacock Street.

*(1) (b) to control the bulk and scale of buildings.*

Comment:

The proposal complies with the height of buildings and floor space ratio development standards, which are the key controls that govern the bulk and scale of buildings. The proposed development is well articulated and incorporates varied wall planes, which further minimises building bulk.

Overall, the resulting built form is considered to be appropriate in the context of the site. The proposal has been marginally increased in height for the modification as detailed on the modification plans and the changes are consistent with the original development and not unreasonable or excessive such that they create any unreasonable impacts on view, amenity, overshadowing or building bulk and scale.

In summary, the modified proposal is considered to be of a satisfactory architectural design and built form which is substantially the same with regard to wall height considerations pursuant to the Manly DCP. The changes to selected elements of the external walls do not create any unreasonable impacts of overshadowing, views, bulk or general amenity to adjacent land.

*(1) (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 harbour and foreshores).*

Comment:

The proposed development does not disrupt views to or from nearby private or public places.

*(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.*

Comment:

The proposal has included detailed shadow diagrams that indicate the solar impacts of this development are minimal and acceptable in terms of their impact on habitable rooms of the adjoining properties and public open space. In summary, the changes to selected elements of the external walls do not create any unreasonable impacts of overshadowing, views, bulk or general amenity to adjacent land.

*(1) (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.*

Comment:

The subject site is not located within a recreation or environmental protection zone, nor does the site adjoin a recreation or environmental protection zone.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved.

Therefore, the application is supported on merit in this particular circumstance.

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

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 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. Mod2021/0625 for Modification of Development Consent DA2019/1310 for Demolition works, construction of an attached dual occupancy and subdivision into two allotments on land at Lot C DP 302957, 107 Griffiths Street, BALGOWLAH, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plans 1003	13/4/2021	Rapid Plans
Ground Floor Plan 2001	13/4/2021	Rapid Plans
First Floor Plan 2003	13/4/2021	Rapid Plans
Roof Plan 2005	13/4/2021	Rapid Plans
Sections 1 3001	13/4/2021	Rapid Plans
Sections 2 3002	13/4/2021	Rapid Plans
Garage and Driveway Plan 3003	13/4/2021	Rapid Plans
Elevations 1 4001	13/4/2021	Rapid Plans
Elevations 2 4002	13/4/2021	Rapid Plans
Elevations Front Fence 4003	13/4/2021	Rapid Plans

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

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

### B. Modify Condition No. 22 Survey Certificate to read as follows:

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the modified approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the modified approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the modified approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

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

**Signed**



**Catriona Shirley, Planner**

The application is determined on 01/10/2021, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**