

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0302
<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot B DP 340085, 17 Old Sydney Road SEAFORTH NSW 2092
<b>Proposed Development:</b>	Modification of Development Consent DA2021/1835 granted for Construction of a swimming pool and studio
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density 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>	Martin Joseph O'Connor Louise Helen O'Conner
<b>Applicant:</b>	Granny Flat Solutions Pty Ltd
<b>Application Lodged:</b>	15/06/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	24/06/2022 to 08/07/2022
<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

Development Consent was granted on 15 November 2021 under Development Application DA2021/1835 for the construction of a swimming pool and studio.

This application has been made pursuant to Section 4.55(1A) of the EP&A Act 1979 seeking to make the following minor amendments to the approved development:

- Move south facing window W03 further to the south.
- Change north facing window W02 to a bi-fold window.
- Remove approved sliding door on southern elevation.
- Minor modifications to bi-fold doors on eastern elevation.

The height and footprint of the studio remains unaltered subsequent to the modifications.

## 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 - 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 340085 , 17 Old Sydney Road SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the western side of Old Sydney Road, Seaforth.</p> <p>The site is irregular in shape with an angled frontage of 12.63m and respective depths of 52.63m and 60.15m along the northern and southern side boundaries. The site has a surveyed area of 1062sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a single storey dwelling house.</p> <p>The landscape character of the site comprises lawn areas, dense hedging and small to medium sized trees.</p> <p>The site experiences a gradual fall of approximately 2.3m that slopes away from the north-western rear corner towards the south-eastern front corner.</p>

### Description of Surrounding Development

The surrounding built environment is characterised by detached low density residential development, ranging from 1-3 storeys in height.

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:

- **Development Application DA2021/1835** for construction of a swimming pool and studio approved by Council on 15 November 2021.

### APPLICATION HISTORY

The superseded plans did not contain the RL of the roofline. Council requested that this information be provided on revised plans to allow the building height to be calculated correctly. The applicant subsequently provided revised plans with the RL of the roofline, which corresponds with the approved RL for the roofline under the previous development application.

The additional information did not alter the scope of works proposed and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

### 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 DA2021/1835, 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>• The minor amendments to the windows and doors to not prompt any amenity impacts.</li> <li>• The modified development does not change the height or footprint of the approved studio.</li> <li>• The footprint of the studio and pool remains unaltered.</li> </ul>
(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 DA2021/1835 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal still pertains to the construction of a studio and swimming pool.</li> <li>• The modified development does not change the height or footprint of the approved studio.</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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
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	
(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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2021 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 98</u> of the EP&amp;A Regulation 2021 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 2021 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></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p>

Section 4.15 'Matters for Consideration'	Comments
	<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 24/06/2022 to 08/07/2022 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 (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with this application (see BASIX Certificate No. 1238949S\_03, dated 27 May 2022). A condition has been included with this consent to ensure compliance with this BASIX Certificate.

### SEPP (Biodiversity and Conservation) 2021

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

### SEPP (Resilience and Hazards) 2021

## Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter 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
Height of Buildings:	8.5m	4.17m	4.17m	-	Yes
Floor Space Ratio	0.4:1 (424.8sqm GFA)	0.32:1 (337sqm GFA)	0.32:1 (337sqm GFA)	-	Yes

**Note:** GFA refers to gross floor area.

## Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 1062sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 750sqm of site area	1 dwelling on 1062sqm site	1 dwelling on 1062sqm site	Yes
4.1.2.1 Wall Height (above existing ground level)	North: 6.5m (based on gradient less than 1:60)	2.23m	2.23m	Yes
	South: 6.5m (based on gradient less than 1:60)	2.89m	2.89m	Yes
4.1.2.2 Number of Storeys	2 storeys	studio is single storey	studio is single storey	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.37m	1.37m	Yes
	Pitch: maximum 35 degrees	< 35 degrees	< 35 degrees	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	40.3m	40.3m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 0.74m (1/3 of wall height)	3.64m	3.64m	Yes
	South: 0.96m (1/3 of wall height)	4.24m	4.24m	Yes
	Windows: no windows within 3m of side boundaries	no new windows within 3m of side boundaries	no new windows within 3m of side boundaries	Yes
4.1.4.4 Rear Setbacks	8m	1m	1m	No further non-compliance
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open	Open space 60% (637.2sqm) of site area	57.70% (612.8sqm)	57.70% (612.8sqm)	No further non-compliance
	Open space above	0%	0%	

Space Area: OS4	ground 25% max. of total open space			
4.1.5.2 Landscaped Area	Landscaped area 40% (245.12sqm) of proposed open space	65.93% (404sqm) of open space	65.93% (404sqm) of open space	Yes
	4 native trees	4 trees conditioned	4 trees conditioned	Yes - with conditions
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	> 18sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.3m	0.3m	Yes
	Curtilage: 1m setback from side/rear boundaries	1.5m	1.5m	Yes
	Water line: 1.5m setback from side/rear boundaries	4.1m	4.1m	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

### Detailed Assessment

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

The Manly DCP 2013 prescribes a minimum rear setback of 8m. The approved studio involves a rear setback of 1m, which does not comply with the prescribed requirement. Despite this, the non-compliance was supported on merit due to consistencies with the objectives of this control. In particular, the non-compliant rear setback will have no unreasonable privacy, overshadowing, view sharing or other amenity impacts.

It is noted that the modified works do not change the approved building envelope and thus, the approved non-compliant rear setback remains unchanged. Therefore, no further consideration of this control is required for the purpose of this assessment.

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

The Manly DCP 2013 requires at least 60% of the site to consist of total open space. The total open space of the approved development equates to 57.7% of the site area, which represents a minor departure from the control. Despite this, the proposal was supported on merit due to consistencies with the outcomes of this control, particularly in relation to vegetation planting, internal amenity, stormwater management and vegetation retention.

It is noted that the modified works do not change the approved building envelope and thus, the approved non-compliant total open space remains unchanged. Therefore, no further consideration of this control is required for the purpose of this assessment.

### **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 2022**

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. Mod2022/0302 for Modification of Development Consent DA2021/1835 granted for Construction of a swimming pool and studio on land at Lot B DP 340085, 17 Old Sydney Road, SEAFORTH, subject to the conditions printed below:

### 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 Plan	11 July 2022	Granny Flat Solutions

Floor Plan	11 July 2022	Granny Flat Solutions
Elevation & Section	11 July 2022	Granny Flat Solutions

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1238949S_03	27 May 2022	Efficient Living Pty Ltd

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.

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

**Signed**



**Thomas Burns, Planner**

The application is determined on 14/07/2022, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**