

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                                           |                                                                                                                       |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | Mod2018/0274                                                                                                          |
| <b>Responsible Officer:</b>               | Maxwell Duncan                                                                                                        |
| <b>Land to be developed (Address):</b>    | Lot 29 DP 35319, 8 Fromelles Avenue SEAFORTH NSW 2092                                                                 |
| <b>Proposed Development:</b>              | Modification of Development Consent DA0047/2011 granted for alterations and additions to the existing dwelling house. |
| <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>                             | Werner Michael Hoffmann<br>Megan Duggan                                                                               |
| <b>Applicant:</b>                         | Werner Michael Hoffmann                                                                                               |
| <b>Application lodged:</b>                | 01/06/2018                                                                                                            |
| <b>Integrated Development:</b>            | No                                                                                                                    |
| <b>Designated Development:</b>            | No                                                                                                                    |
| <b>State Reporting Category:</b>          | Residential - Alterations and additions                                                                               |
| <b>Notified:</b>                          | 04/06/2018 to 20/06/2018                                                                                              |
| <b>Advertised:</b>                        | Not Advertised                                                                                                        |
| <b>Submissions Received:</b>              | 0                                                                                                                     |
| <b>Recommendation:</b>                    | Approval                                                                                                              |

### 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 - 3.4.2 Privacy and Security

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 29 DP 35319 , 8 Fromelles Avenue SEAFORTH NSW 2092                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one (1) allotment located on the corner of Fromelles Avenue and Montauban Avenue.</p> <p>The subject property is an even rectangle shape with a corner splay of dimensions as follows: width 19.81m, depth 31.99m and a total area of 629.3m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling on site.</p> <p>The property is oriented from East to West and includes a slope from front to rear of 1:21.3.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development typically single and two storey dwelling houses.</p> |

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:

- DA47/2011- Part 3- Removal of rear addition, enlarge rear deck and change of roof- Approved 6 July 2012.
- DA47/2011- Part 2- Amendments to approved carport and shed - Approved 6 June 2011.
- DA47/2011- Alterations and additions to the existing dwelling house including double carport and shed- Approved 7 March 2011.

\* A construction certificate was issued for the original consent in back in 2011, with the works having been physically commenced.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to amend DA47/2011 including:

- Removal of front carport.
- Removal of rear shed.
- Removal of south facing privacy screen at rear deck.
- Relocation of deck stairs to the north of the deck.
- Addition of deck staircase to the south.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

## 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 DA47/2011, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15(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                                                                                                                                                                                                                                                                                 | <b>Yes</b><br>The modification, as proposed in this application, is considered to be of minimal environmental impact.                                                                                                                           |
| (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 DA47/2011                                                                  |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require, or<br><br>(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 | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided                                                                                                                                                                                                                                | No submissions were received in relation to this application.                                                                                                                                                                                   |

| Section 4.15(1A) - Other Modifications               | Comments |
|------------------------------------------------------|----------|
| by the development control plan, as the case may be. |          |

### 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                                      | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 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, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</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 clause is not relevant to this application.</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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements</p> |

| Section 4.15 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                    | <p>under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 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><br/>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><br/>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><br/>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 “Public Exhibition” 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.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

| External Referral Body | Comments |
|------------------------|----------|
|                        |          |



| External Referral Body | Comments                                                                                                                                                                                             |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended. |

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

### State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Nil

### 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        | 4.5m     | 4.5m     | N/A         | Yes      |

### Compliance Assessment

| Clause                  | Compliance with Requirements |
|-------------------------|------------------------------|
| 4.3 Height of buildings | Yes                          |
| 4.4 Floor space ratio   | Yes                          |

### Manly Development Control Plan

#### Built Form Controls

| Built Form Controls - Site Area: 629.3m <sup>2</sup> | Requirement | Approved | Proposed | Complies |
|------------------------------------------------------|-------------|----------|----------|----------|
| 4.1.2.1 Wall Height                                  | South: 6.5m | 3.9m     | 3.9m     | Yes      |

|                                                      |                                         |                                        |                                                          |     |
|------------------------------------------------------|-----------------------------------------|----------------------------------------|----------------------------------------------------------|-----|
|                                                      | North: 6.5m                             | 4.3m                                   | 4.3m                                                     | Yes |
| 4.1.4.1 Street Front Setbacks                        | Prevailing building line / 6m           | 2m, consistent with prevailing setback | 8m, consistent with prevailing setback (Amended carport) | Yes |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | South side 1.3m (based on wall height)  | 5.1m                                   | 4.9m (measured from southern southern stair)             | Yes |
|                                                      | North side 1.43m (based on wall height) | 5.8m                                   | 4.8m (measured from northern stair)                      | Yes |
| 4.1.4.4 Rear Setbacks                                | 8m                                      | 8m                                     | 9.9m                                                     | 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                         |
| 3.4.2 Privacy 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) | Yes                          | Yes                         |
| 4.1.4 Setbacks (front, side and rear) and Building Separation                          | Yes                          | Yes                         |

#### Detailed Assessment

##### **3.4.2 Privacy and Security**

##### Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

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

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

##### Comment:

The privacy screen to the southern side of the ground floor deck is proposed to be removed as a part of this application. Immediately adjoining to the south of the subject site is Montuban Avenue. The existing physical separation between the deck and the southern boundary (5.1m setback) is a sufficient measure to maintain privacy both visual and acoustic between the subject site and the street.



The proposed north facing steps from the deck are setback 4.8m from the northern boundary. The proposed staircase will not unreasonably increase the potential for overlooking to the adjoining northern property (10 Fromelles Avenue, Seaforth) given the physical separation between the staircase and adjoining northern property.

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

Comment:

The removal of the south facing privacy screen on the ground floor deck will allow for greater levels of light and air to penetrate the outdoor living space without resulting in unreasonable privacy impacts.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

The proposal retains and opens frontage to allow for passive surveillance.

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.

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Manly Section 94 Development Contributions Plan**

S94 Contributions are not applicable to this 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. Mod2018/0274 for Modification of Development Consent DA0047/2011 granted for alterations and additions to the existing dwelling house. on land at Lot 29 DP 35319,8 Fromelles Avenue, SEAFORTH, 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 |
| 11003-2/ Working Drawings                           | Revision B/ May 2018 | W. Hoffman  |

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

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

**Signed**



**Maxwell Duncan, Planner**

The application is determined under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**

**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

| Notification Document                                                                         | Title            | Date       |
|-----------------------------------------------------------------------------------------------|------------------|------------|
|  2018/338989 | Notification Map | 04/06/2018 |

## ATTACHMENT C

| Reference Number                                                                                | Document                                                                                                     | Date       |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|------------|
|  MOD2018/0274  | 8 Fromelles Avenue SEAFORTH NSW 2092 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact | 01/06/2018 |
|  2018/335863   | DA Acknowledgement Letter - Werner Michael Hoffmann                                                          | 01/06/2018 |
|  2018/336824   | Report - Statement of Environmental Effects                                                                  | 01/06/2018 |
|  2018/336860   | Letter - Request not to Advertise                                                                            | 01/06/2018 |
|  2018/336862   | Plans - Master Set                                                                                           | 01/06/2018 |
|  2018/336858   | Report - Statement of Environmental Effects                                                                  | 01/06/2018 |
|  2018/336857   | Applicant Details                                                                                            | 01/06/2018 |
|  2018/336856   | Modification Application Form                                                                                | 01/06/2018 |
|  2018/338886   | ARP Notification Map                                                                                         | 04/06/2018 |
|  2018/338889  | DA Acknowledgement Letter (not integrated) - Werner Michael Hoffmann                                         | 04/06/2018 |
|  2018/338989 | Notification Map                                                                                             | 04/06/2018 |
|  2018/339015 | Notification Letter - Mod - 9                                                                                | 04/06/2018 |
|  2018/378272 | Confirmation of Notification Sign - Mod2018/0274 8 Fromelles Avenue SEAFORTH                                 | 21/06/2018 |