

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0378
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 11 DP 1216827, 49 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2018/0880 granted for construction of a dwelling house and a secondary dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	James Dempsey Manion Maureen Adele Manion
Applicant:	Brenchley Architects Pty Ltd
Application Lodged:	06/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/08/2019 to 02/09/2019
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: %
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal involves a modification of consent for a dwelling and a secondary dwelling. Specifically, the modification involves the extension of a rear deck and the request to amend and delete a number of conditions provided in the original consent.

In particular, the changes relate to a request to enlarge the deck by 2 metres in length and enlarge windows from the approved situation.

The proposed modified design has an effect on the relationship between the development and privacy to neighbours, particularly to the east at 45 Lauderdale Avenue.

The proposed 2.0m extension to the rear suspended deck results in a height non-compliance due to the deck extending over a stone retaining wall and the land dropping away. This location above the stone wall does not cause any substantial additional privacy impact and conditions remain to require privacy screens to the side of the deck. Therefore, the non-compliance with the building height development standard is not considered unreasonable and the variation does not result in any unreasonable impacts to adjoining or surrounding properties.

The application has also been assessed against the planning controls of the MDCP 2013, and whilst there are still minor variations to the wall height control and setback controls, these have been found to be consistent with the objectives and requirements of the control (subject to conditions). In this regard, the built form will provide appropriate separation and design to minimise privacy impact.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on privacy, views or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the application be approved.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a modification to the approved "construction of a dwelling house and a secondary dwelling."

In detail, the modification involves:

- Request to amend DA condition 10 in regard to the BCA class. This includes modifying the entry stairs and entry way to the secondary dwelling to establish a separate entry and fire protection between the two dwellings (including extension of carport slab).
- Request to amend Condition 36 in regard to landscaping. This includes a new 3m high fence in place of boundary planting as prescribed by the condition.
- Request to amend Condition 20 in regard to window design for privacy. Request the condition be amended for ground floor windows 14, 15, and 16 (as a result of screen planting at western boundary and proposed fence to the eastern boundary).
- Change proposed window W21 to a glazed door and extension of W2
- Extend the first floor rear balcony to 2m in depth with privacy screens to either side

Request to amend DA condition 10

The proposed modification to separate the dwelling with a fire resistant wall results in the development no longer being a "Class 2" building. As such, it is recommended that Condition 10 relating to a Class 2 building, is deleted.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

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

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 11 DP 1216827 , 49 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of an allotment located on the southern side of Lauderdale Avenue. The site is an irregular in shape with a frontage of 8.805m along Lauderdale Avenue and an approximate depth of 40m. The site has a surveyed area of 460.1m². The site is located within the R1 General Residential zone and accommodates a dwelling house on site. It is also noted that Council's mapping indicates part of the site (to the south-west) to be within the E4 Environmental Living zone. The site slopes from the front at Lauderdale Avenue down to the rear toward the foreshore. This slope involves approximately a 14 metre fall from the front to the rear. Additionally, there is a steep drop from a stone retaining wall toward the rear of this site, being approximately 10 metres from the top of the wall to the rear of the site. This splits the site into two with each side being at separate level. The site has vegetation at each level including a variety of tree species. Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development on each side of Lauderdale Avenue.

Map:

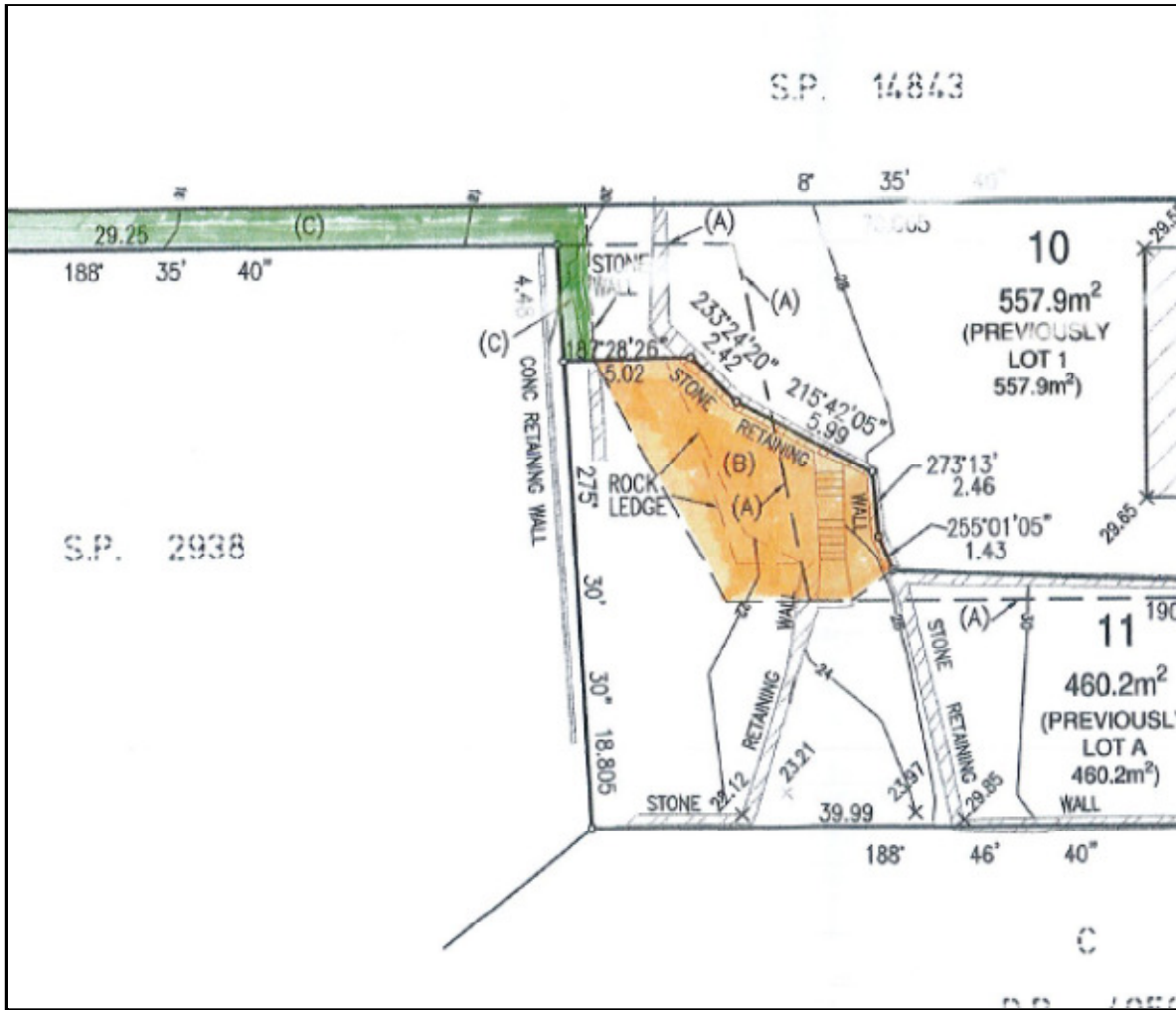


SITE HISTORY

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 No.DA77/2015 - Boundary realignment (subdivision) of the existing two lots with new easements.

It is noted that this re-alignment involved the change of the boundary to be partially aligned with a stone retaining wall as below:



Development Application No.2018/0880 for alterations and additions to a dwelling house, including construction of a secondary dwelling (attached) was approved by the Northern beaches Planning Panel with deferred commencement conditions on 16/11/2018.

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 DA2018/0880, 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	Yes 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 DA2018/0880.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	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 2013 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 by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any	Manly Development Control Plan applies to this proposal.

Section 4.15 'Matters for Consideration'	Comments
development control plan	
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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

Section 4.15 'Matters for Consideration'	Comments
	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 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 process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Rodney Daniel Timm	3 / 1 A Bolingbroke Parade FAIRLIGHT NSW 2094
Mrs Diana Christine Noyce	2 / 1 A Bolingbroke Parade FAIRLIGHT NSW 2094
Mr Philip Grenville Smith	6 / 1 A Bolingbroke Parade FAIRLIGHT NSW 2094
Particular Planning Pty Ltd Ms Alison Louise Wakefield Mr David Charles Wright	C/- 6a Penrose Place FRENCHS FOREST NSW 2086
Mr Trevor Stuart Kennedy Mrs Ann Patricia Kennedy	1 / 43 Lauderdale Avenue FAIRLIGHT NSW 2094
J Cronan	1 / 57 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Richard Daniel Evans	4 / 57 Lauderdale Avenue FAIRLIGHT NSW 2094

The following issues were raised in the submissions and each have been addressed below:

- Extension of deck and impact on amenity; potential for parties; privacy (acoustic and visual); the balcony exceeds height limit
Comment:
As further discussed under the section for Privacy in this report, the proposed extension to the deck is in a location which is well separated from neighbouring properties and the deck complies with the controls under the Manly DCP for setbacks. Furthermore, the balcony overhangs an existing stone wall so that the numerical development standard for height is exceeded. However, the level of the deck will remain and conditions require that privacy screens be provided to each side elevation. This results in a reasonable outcome for privacy.
- The large fig tree now having been removed, the decay of the root system and the impact on the significant retaining wall; concern as to whether the retaining wall will hold the build; Geotechnical report was completed on the basis of the approved DA; site stability
Comment:
This modification does not involve any change to the proposed excavation, ground floor footings

or any other matter that would significantly effect site stability. Furthermore, deferred commencement conditions relating to geotechnical issues, remain on the consent.

- Impact on views to 45 Lauderdale Avenue

Comment:

The proposed 3m fence is not supported and this will ensure appropriate view retention for 45 Lauderdale Avenue.

- Request to provide shadow diagrams for all times of year; lack of overshadowing diagrams to enable assessment of impact caused by deck

Comment:

The information provided was sufficient to assess that the proposal would comply with the requirements under the Manly DCP for Sunlight Access and Overshadowing.

- Request for dilapidation report.

Comment:

Condition 22 of the existing determination requires a dilapidation report. This report recommends no change to this.

- The privacy impact of the windows which do not comply with the control; Changes to windows and addition of fence; lack of louvers to windows; Level of the proposed development (on piers) and this being the reason for an oversized fence; request for conditions (relating to privacy screen and fence) to be returned to as imposed by the determination panel; lack of detail for the fence including lack of RL and materials

Comment:

The changes to the proposed eastern windows and the addition of a fence at the eastern elevation is not supported.

- Lack of side setback for secondary dwelling and location close to the public pavement; request for traffic assessment

Comment:

The proposed modification does not involve changes to the approved setback of the secondary dwelling. The secondary dwelling was approved under the previous development application and this included a consideration of traffic impact.

- Unacceptable finishes; aesthetics

Comment:

With Condition 17 requiring the roof to be medium to dark in colour, the proposal is acceptable and complementary with the area in terms of finishes and aesthetics.

- "A deferred commencement consent was issued and the consent at the time of the lodgement of this modification is not operational. Council cannot be in a position to approve further built form south of the retaining wall in which the deferred commencement conditions in part relate, due to the approved tree removal specifically the Port Jackson fig which abutted the retaining wall." (in relation to site stability)

Comment:

Under *Section 4.55 of the Environmental Planning and Assessment Act 1979* a consent may be modified (including a consent with deferred commencement conditions). The proposed extension of the deck to the south can be approved through the modification application whilst the retaining the deferred commencement conditions.

- Lack of updated Basix

Comment:

With the exception of windows as modified by condition, the original BASIX certificate relates to the modified proposal.

- Lack of parking (only one space for each dwelling); Secondary dwelling
Comment:
The proposed modification does not increase density and retains the approved Secondary Dwelling. As such, further parking is not required as a result of this modification.
- Development should be consistent with associated values of Manly Foreshore Scenic Protection Area
Comment:
Subject to the removal of the 3m fence the the associated visual bulk, the proposal will be be consistent with associated values of Manly Foreshore Scenic Protection Area.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. <i><u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i>

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)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated which was considered under the original related development assessment. 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 modification works proposed.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The modification 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.

Other Service Infrastructure Authorities

The modification of the proposal was not required to be referred to the *Roads and Maritime Service* and no other service authority referral issues are raised pursuant to the SEPP.

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	8.1m	11.5m	34%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
6.22 Development for the purposes of secondary dwellings in certain residential and environment protection zones	Yes

Detailed Assessment

4.3 Height of buildings

Whilst the modification application will result in a building height that exceeds the maximum height permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation is as follows:

Assessment against the underlying objectives of the standard, pursuant to Clause 4.3 – ‘Building Height’ of the MLEP 2013

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

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

Comment:

The modification involves an extension of the approved 'suspended deck' toward the rear of the site, over an existing stone retaining wall. This results in a breach of the numerical development standard. The dwelling retains a two storey presentation in the street and the enclosed section of the dwelling (walls and roof) remain numerically compliant with the development standard (8.5m). As a result of the extension being toward the rear of the dwelling, the balcony (or 'suspended deck' as labelled on the plans) will not result in any unreasonable visual impact which could be antipathetic to the desired future streetscape character. Furthermore, the open nature of the balcony ensures that the dwelling and secondary dwelling would present as a building with a height and roof form as to be expected for the

area.

The development satisfies this objective.

(b) to control the bulk and scale of buildings,

Comment:

The proposal maintains the approved number of stories and style of roof with the height variation relating to the extension of the balcony toward the rear of the dwelling. The extension of this open structure will not result in providing an unreasonable bulk or scale for the site. In particular, the presentation of the dwelling from the rear (below the steep stone wall) will remain similar due to the approved rear wall of the dwelling (which complies with building height), despite numerical compliance or non-compliance of the balcony with the development standard.

The development satisfies this objective.

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal including the open balcony will not have any unreasonable impact on views, subject to conditions.

The development satisfies this objective.

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

Comment:

The proposed changes would not result in an outcome which has an unreasonable impact on solar access, subject to conditions.

The development satisfies this objective.

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

Comment:

Not applicable

Assessment against the underlying objectives of the R1 General Residential

In assessing the developments the non-compliance, consideration must be given to its consistency with

the underlying objectives of the R1 General Residential.

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

Assessment of the variation against the objectives of Clause 4.6 of the MLEP 2013

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

In this circumstance, providing flexibility to the building height development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

It is appropriate to allow flexibility in this circumstances, as additional building height can be provided without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 460.1m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	East: 7.1m (based on gradient 1:10)	7.4m	7.4m	No (but no change to approved)
	West: 7m (based on gradient 1:12)	7.4m	7.4m	No (but no change to approved)
4.1.2.2 Number of Storeys	2	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.5m	1.5m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 2.37m (based on wall height)	0m-1.9m	0m-1.9m	No (see comments)
	North: 2.33m (based on wall height)	0m-1.0m	0m-1.0m	No (see comments)
	Windows: 3.0m	0.9m-2.0m	0.9m-2.0m	No (see comments)
4.1.4.4 Rear Setbacks	8.0m	11.7m	11.7m	Yes

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	56.5% (260m ²)	57.5% (265m ²)	Yes
	Open space above ground 25% of total open space	13.96% (36.3m ²)	15.9% (42.3m ²)	
4.1.5.3 Private Open Space	18m	50sqm	55sqm	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	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 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	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Facilities)		
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	No
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
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Subject to conditions, the 3.0m boundary fence to the eastern boundary is not supported. This will ensure an appropriate outcome for sunlight access and overshadowing.

3.4.2 Privacy and Security

Description of non-compliance

The proposed windows at the side boundaries are non-compliant with Clause 4.1.4.2 which requires new windows to be setback at least 3 metres from side boundaries. Additionally, these windows, do not use "use narrow, translucent or obscured glass windows to maximise privacy where necessary," as required by Clause 3.4.2.1 for privacy.

A request has been made by the applicant for Condition 20 (in regard to window design for privacy) to be amended. This involves selected windows (W14, W15 and W16) to be wide and full length, with the setbacks varying from 1.9m-2.1m.

The proposed 'suspended deck' to the rear has a rear section of the deck that is non-compliant with the height of building development standard being 11.5m, with the standard being 8.5m.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To 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:

An analysis of the potential for overlooking and the factors contributing to minimising privacy loss is made for each of the windows which have been requested to have a change of design (through

removal of condition):

i) Window 15 and Window 16- These windows have a setback of 1.9-2m from the eastern boundary.

It is noted that as discussed under Clause 4.1.10 Fencing, the 3.0m eastern boundary fence is not supported. As such, this cannot be relied upon to provide privacy.

The size, height above ground and design of the proposed windows in a location which would overlook neighbouring private open space and living spaces, provides for an unreasonable visual privacy outcome. Furthermore, the windows do not comply with the side boundary setback requirement of 3m.

As such, it is considered that Condition 20 should remain in order to provide a better design for privacy for Window 15 and Window 16.

ii) Window 14- This window has a setback of 2.1m from the western boundary.

This window is located on the western elevation and is well separated from the neighborhood private open space area and is also adjacent to smaller sized neighbouring windows. Potential for overlooking from this window is also reduced through the balustrade and proposed landscaping (although it is noted that minimal weight is given to landscaping for privacy under a established principle in the LEC).

As a result of these mitigating factors, reduction in the size or change to the design of this window is not considered necessary. As such, the condition is recommended to be amended as follows:

The proposed condition Condition 20 is as follows:

"Condition 20:

Window design for privacy

The proposed windows W4, W5, W6, W15, W16 are each to be redesigned to be one of the following:

-Highlight windows with a solid sill height to a level of 1.6m from finished floor level

-Wholly obscured and fixed (not able to be opened) glazing up to a height of 1.6m

-Provided with fixed louvre screens to a level of 1.6m above finished floor level with no individual

opening greater than 30 millimetres

Reason: To reasonably minimise privacy impact between the subject site and adjoining properties."

iii) Other proposed windows

The proposed modifications to W2 and W21 are reasonable due to the limited size and location well separated from neighbouring properties.

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 proposal involves extension of the approved balcony (or 'suspended deck') toward the rear of the site to form a rectangular shape. Condition 17 is recommended to remain on the consent to provide a privacy screen to the each elevation of the 'suspended deck.' The extension of the deck along with privacy screens ensures access to light and air from the rear of the site for the subject dwelling but also

an appropriate mitigation of privacy loss through the privacy screens to the side elevations.

This screen will provide a reasonable compromise between ensuring adequate privacy and allowing access to view light and air at other areas of the deck and private open space.

Despite the technical increase in building height as a result of the deck overhanging an existing stone wall, the proposed extension to the deck will match the approved level of the deck and will remain well separated from the neighbouring properties (through setbacks which comply with the control).

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides entrances areas at the front of the property that provide reasonable opportunity for awareness of neighbourhood security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / 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.

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

See comments under 'Privacy' in regard to windows within 3.0m of the side boundary. Subject to conditions, the proposal will meet the objectives of this clause.

4.1.10 Fencing

The proposal provides a notation for a 3.0m high side boundary fence at the eastern boundary. The Northern Beaches Local Planning Panel previously imposed a condition which removed this notation.

The 3m height of the fence provides a visual impact that is not acceptable, particularly given the scenic qualities of the Foreshore Scenic Protection Area.

As such, it is recommended that the condition to remove the notation of a 3.0m fence at the eastern boundary is to be retained.

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 inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

Accordingly

Conclusions on the Assessment of the Application

The modification to the proposed development does not comply with the 'Height of Buildings' Development Standard of 8.5m under the MLEP 2013. However, the deck which breaches the development standard does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013.

In this case, the proposed deck provides a design with privacy screens and a physical separation from neighbouring properties that allows for appropriate mitigation of privacy impact. A condition is also amended to provide a balanced outcome in design for privacy at the eastern elevation. Furthermore, an assessment against the objectives of the clause have found the proposal to be consistent and reasonable.

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue the compliance of the suspended deck with the setback controls and the conditions imposed to ensure there will not be unreasonable amenity impacts.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0378 for Modification of Development Consent DA2018/0880 granted for construction of a dwelling house and a secondary dwelling on land at Lot 11 DP 1216827,49 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2018-050-A00- Site Analysis	June 2019	Brenchley Architects
2018-050-A01- Site Plan	June 2019	Brenchley Architects
2018-050-A02- Ground Floor	June 2019	Brenchley Architects
2018-050-A03- Level 1 Plan	June 2019	Brenchley Architects
2018-050-A04- Elevations	June 2019	Brenchley Architects
2018-050-A05- Elevations	June 2019	Brenchley Architects
2018-050-A06- Section 1	June 2019	Brenchley Architects
2018-050-A07- Section 2	June 2019	Brenchley Architects

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

c) 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 20 - Window Design for Privacy to read as follows:

The proposed windows W4, W5, W6, W15, W16 are each to be redesigned to be one of the following:

- Highlight windows with a solid sill height to a level of 1.6m from finished floor level
- Wholly obscured and fixed (not able to be opened) glazing up to a height of 1.6m
- Provided with fixed louvre screens to a level of 1.6m above finished floor level with no individual opening greater than 30 millimetres

Reason: To reasonably minimise privacy impact between the subject site and adjoining properties."

C. Delete Condition 10 - Change of Use/ Building Upgrade to read as follows:

The existing building that is proposed to be converted to a secondary dwelling will result in a change of classification to a Class 2 building and will be required to be upgraded to comply with the provisions of the Building Code of Australia.

Details of upgrading works are to be included in the Construction Certificate and be implemented prior to occupation of the new building or part.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.