

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0666
Responsible Officer:	Reeve Cocks
Land to be developed (Address):	Lot 2 DP 558244, 8 B Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2022/1471 granted for alterations and additions to a dwelling house including a swimming pool and spa
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Justin Eric Andrew Fengels Caroline Grace Fengels
Applicant:	Third Wave Design Pty Ltd

Application Lodged:	19/12/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	27/12/2023 to 25/01/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This development seeks consent for alterations and additions to an existing development consent DA2022/1471 located at 8 B Beatty Street Balgowlah Heights.

Specifically, the works comprise of the following:

Lower Ground Level

- Gym and boat storeroom alterations including changes in RL levels, reconfiguration of stair layout to gym level; new retaining walls to path to marine store; changes in finished floor levels;

deletion of sauna; reconfiguration of bathroom & joinery; additional stair risers; amended doors to NE and SE façade.

Ground level

- Reconfiguration of bathroom & guest bedroom entry; replace sliding doors between TV room & alfresco to a wall; shift wall location at the bottom of internal stairs; reconfigure comms/electrical room; delete stair to door 16; adjust stair location from alfresco to pool deck; change timber deck to stone.

Level 1 Bedroom

- Adjust door location to ensuite 2; reconfiguration of internal layout; amend balcony plan off bedroom 2.

Level 2 Living Rooms

- Delete door to study; amend pond shape; add additional planter; delete timber decking to south of pond for planter; amend window 13 shape to guest WC; amend WC layout; delete door between pantry & laundry; change door 09 to fixed window; extend deck to SE boundary; addition of a 700mm upstand to windows 14 & 15 in the family room.

Level 3 Entry Level

- Change louvre window to fixed glass; amend main robe layout; relocate garage door entry; amend entry layout, stair location & void; addition of a window (34); reconfigure window 04; new vehicle turntable; new opening in roof to area outside kitchen.

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 2 DP 558244 , 8 B Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The site has an area of 1033 square metres (sqm) and is connected to Beatty Street by a 3.0 metre (m) wide concrete driveway approximately 64m long. The site has a northwestern side boundary of 108.7m, a south-eastern side boundary of 45.55m and a northern (rear) boundary of 16.6m. Excluding the driveway, the lower rectangular part of the site has an area of approximately 800sqm. The driveway has a fall from Beatty Street (RL 39.60) to the elevated concrete ramp/parking area (RL 23.8). The site then continues to fall steeply to the boundary with Forty Baskets Beach (RL 4.24). Detailed Description of Adjoining/Surrounding Development The neighbouring part one, part two storey residence on the north western side (No 10 Beatty Street) is located close to the bottom of the driveway, between 4m and 7m from the common side boundary. The remainder of No 10, below the existing residence towards Forty Baskets Beach is covered with mature vegetation. A one and two storey stone and weatherboard residence (No 8A Beatty Street), is located directly behind and above the site. The neighbouring dwelling on the south-eastern side is located above the site and close to Beatty Street. The dwelling is oriented towards Forty Baskets Beach, with a number of terraces leading down towards a what appears to be a recently refurbished studio/boathouse. The immediate Beatty Street locality is characterised by large residences in landscaped settings with views commonly available across Harbour areas.

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:

Building Application No.603/80 for a new dwelling was approved by Council in 1980.

Development Application No.137/99 for alterations and additions including landscaping works was approved by Council on 30/11/1999.

Development Application No.512/05 for alterations and additions to an existing dwelling, new boatshed and swimming pool and associate landscaping works was approved by Council on 27/4/2006.

Development Application No.301/06 for alterations and additions to an existing boatshed , new pool and stairs was approved by Council on 5/12/2006.

Pre-lodgment Meeting No.PLM2022/0066 for alterations and additions to a dwelling house was not held with Council and cancelled by the applicant. (The diagrams closely align with DA2022/1421)

Development Application No.DA2022/1471 for alterations and additions to a dwelling house including a swimming pool and spa.

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 DA2022/1471, 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 for the following reasons: • The proposed alterations are mostly within the existing building footprint. • No new excavation works are proposed on unaltered ground in this modification application. • The bulk and scale of the development is not altered.
(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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/1471 for the following reasons: • The works do not alter the use, bulk or scale of the approved development application. • The changes are minor in nature relating to window alternations, internal reconfiguration and wall layouts.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	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.

Section 4.55(1A) - Other Modifications	Comments
(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	
(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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.

Section 4.15 'Matters for Consideration'	Comments
	<u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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. <u>Clause 69</u> of the EP&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 of consent. <u>Clause 69</u> of the EP&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 of 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 justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions Pty Limited) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 27/12/2023 to 25/01/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2022/1471 as described in reports and as illustrated on plans. No concerns are raised by Landscape Referral subject to consideration by the Assessing Planning Officer of the landscape open space and landscape area calculations. Landscape conditions 21, 24, 25, 37, 38 and 47 of the development consent remain.
NECC (Bushland and Biodiversity)	The proposal seeks approval for modification of Development Consent DA2022/1471 granted for alterations and additions to a dwelling house including a swimming pool and spa. The comments in this referral relate to the following applicable controls and provisions: - MANLY LEP Clause 6.5 Terrestrial Biodiversity - SEPP (Resilience and Hazards) - Coastal Environment Area The proposed modifications would take place in areas that would be previously disturbed. Impact to native flora and fauna would be unlikely. All previous biodiversity conditions still apply.
NECC (Coast and Catchments)	The proposal seeks approval for modification of development consent DA 2022/1471 granted to carry out alterations and additions to a dwelling house including a swimming pool and spa. The proposed modifications relate to improving the internal amenity and useability of the residence. Reconfiguring stairs at the gym/boat store level and replacing existing retaining walls will improve access and safety around the lower levels of the site.

Internal Referral Body	Comments
	The subject property is located within the 'Coastal Environment Area' and the 'Coastal Use Area' maps of the Coastal Zone, Sydney Harbour Foreshores and Waterways Area and also in the Foreshore Scenic Protection area. In addition, the subject property is affected by Estuarine Hazards. Part of the subject property is within the 'Foreshores Building Line' This application was assessed in consideration of: § Supplied plans and reports, including; - o Statement of Modifications prepared by Metroplan Services dated 28 November 2023 § Coastal Management Act 2016 § State Environmental Planning Policy (Resilience & Hazards) 2021 Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Estuarine Risk Assessment Study for the Middle Harbour (2022) § Sydney Harbour Foreshores and Waterways Area DCP § Relevant LEP and DCP Clauses The application proposes new access stairs within the foreshores area. The proposed work is consistent with Part 6, Clause 6.10 – Limited development on foreshore area of the Manly LEP 2013 . As per Estuarine Risk Assessment Study for the Middle Harbour (2022), there appears to be risk in terms of estuarine hazards affecting the subject site. An Estuarine Planning Level of 3.06m AHD is applicable and considered relevant for the site. The objectives and requirement of the CMA 2016, SEPP -R & H 2021 and relevant LEP and DCP Clauses have been met. The proposed modifications appear consistent with the design intent of the original proposal. A new condition in additions to those for the original development application are considered necessary

Internal Referral Body	Comments
NECC (Development Engineering)	I have reviewed the Statement of Modification and associated documents and have no objections to the proposed development subject to the retention of the existing engineering conditions of consent.
NECC (Riparian Lands and Creeks)	Supported. The application is for modification to development consent DA2022/1471 as described in reports and as illustrated on plans. No concerns are raised by Riparian Lands and Creeks Referral as the modification proposal is not detrimental to the adjoining waterway. Original Riparian Lands and Creeks Referral conditions remain.
Parks, reserves, beaches, foreshore	The application is for modification to development consent DA2022/1471 as described in reports and as illustrated on plans. No concerns are raised by Parks Reserves and Foreshores Referral as the modification proposal is not detrimental to the landscape character of the adjoining waterway. Parks Reserves and Foreshores Referral conditions 23, 29, 30 and 31 remain.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	This application has been referred as it is within the vicinity of a heritage item, being - Item 11 - Harbour foreshores , listed in Schedule 5 of Manly LEP 2013.
	Details of heritage items affected
	Details of this heritage item, as contained within the Heritage Inventory are: Item 11 - Harbour foreshores <u>Statement of Significance</u> Natural landscape type - Aesthetic. <u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.
	Other relevant heritage listings
	SEPP (Biodiversity and Conservation) 2021
	Australian Heritage Register
	NSW State Heritage Register
	National Trust of Aust (NSW) Register

Internal Referral Body	Comments		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	This application proposes modifications to Consent DA 2023/1471, which approved alterations and additions to an existing multi-storey dwelling house and boathouse, including pool and landscaping. This modification proposes minor changes to all levels of the dwelling and boathouse, including internal reconfiguration and changes to external fenestration. The level of the gym has been lowered and the path and stairs on the lower level have been reconfigured to improve access. The heritage item in the vicinity is the natural harbour foreshore. This modification does not change the bulk and scale of the dwelling and boathouse and does not propose any new works which affect the foreshore area (which is outside the property boundary of 8B Beatty Street). As a result, it is considered that these proposed modifications will not result in any adverse visual impact upon the heritage significance of the heritage item. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of MLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A		

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	The proposal was originally referred to the Aboriginal Heritage Office under DA2022/1471. The Aboriginal Heritage Archaeologist found that; <i>"No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Whilst the area of works does not contain Aboriginal sites or Aboriginal heritage sensitivity other portions of the DA area do. According to the Due Diligence Code of Practice, any land within 200m of water is considered to have</i>

External Referral Body	Comments
	<i>Aboriginal heritage sensitivity and the potential to contain Aboriginal sites.</i> <i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should anything thought to be Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office be contacted. In line with our normal advice for sandy areas, the Aboriginal Heritage Office recommends that the development conditions should provide for stop work provisions (unexpected discovery protocol) in the unlikely event that human remains are uncovered. Should human remains be uncovered, works must cease and the NSW Police must be contacted.</i> Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted." The application was re-referred to Aboriginal Heritage who provided the following comments and conditions; <i>"Reference is made to the proposed development at the above area and Aboriginal heritage.</i> <i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>According to the Due Diligence Code of Practice, any land within 200m of water is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites.</i> <i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should anything thought to be Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office be contacted. In line with our normal advice for sandy areas, the Aboriginal Heritage Office recommends that the development conditions should provide for stop work provisions (unexpected discovery protocol) in the unlikely event that human remains are uncovered. Should human remains be uncovered, works must cease and the NSW Police must be contacted."</i> It is considered that the application is supported subject to the above conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The proposed modifications are not likely to alter coastal processes, reduce public amenity or affect coastal hazards of public safety.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

It is considered that the proposed modification application is not likely to cause an adverse impact on any of the above listed considerations.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council is satisfied that the proposed modifications to the approved development application have been designed, sited and will be managed to avoid an adverse impact on any considerations referred to in subsection (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to
 - iii) foreshores,
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands,

Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

It is considered that the modification application is not likely to cause an adverse impact on the existing access to and along the foreshore, overshadowing, visual and scenic amenity, aboriginal cultural heritage, or the cultural built environment heritage.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed modifications are largely fenestration works and is not likely to cause increased risk of coastal hazards on the subject property or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The subject site is not subject to an certified coastal management program.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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	13.1m	13.1m	54.1%A	As approved
Floor Space Ratio	FSR: 0.4:1	FSR: 0.48:1	FSR: 0.476:1 (492sqm)	19%	As approved

Compliance Assessment

Clause	Compliance with Requirements
5.21 Flood planning	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,033sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density D9: 1 dwelling per 1,150sqm	1 dwelling per 1,033sqm (existing lot)	as approved	No (as approved)
4.1.2.1 Wall Height	Northwest: 8.0m wall (based on gradient 1:4+)	13.m (62.5% variation)	as approved	No (as approved)
	Northeast: 7.2m	13.0m (62.5% variation)	as approved	No (as approved)
	Southwest: 7.2m	7.1m	as approved	Yes
	Southeast: 12.8m (based on gradient 1:4+)	12.8m (60% variation)	as approved	Yes
4.1.2.2 Number of Storeys	2	4	as approved	No (as approved)
4.1.2.3 Roof Height	Height: 2.5m	0.7m	as approved	Yes
	Pitch: maximum 35 degrees	0 to 4.5 degrees	as approved	Yes

4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	Battle Axe shaped lot 64m access handle.	as approved	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Northwest: 1.0m (Ground) 2.0m (Upper storey)	Northwest: Lower Level / pool 1.5m / 3.3m Level 1 1.5m	as approved	No (as approved)
	Southeast: 1.0m (Ground) 2.0m (Upper storey)	Level 2 1.5m to 4.9m Entry Level 4.0m to 16.6m Southeast: Lower Level /stairs 2.1m / 1.8m Level 1 / balcony 0.9m / 0.0m Level 2 0.9m to 4.6m	as approved	No (as approved)
	Southwest	Entry Level 0.45m to 1.7m Carport 0.22m House 11.8m	as approved	No (as approved)
	Windows: 3.0m	Northwest Level 2 1.6m to 4.9m Ensuite 4 1.5m Southeast 1.0m (Carport) 1.1m /1.2m (Laundry / kitchen) Bed 2	as approved	No (as approved)
4.1.4.4 Rear Setbacks	15m Foreshore area	South: 6.4m to 7.6m to property boundary marine store/gym	as approved	No (as approved)
4.1.5.1 Minimum Residential Total Open Space Requirements	Total Open Space 60% of site area 619.8sqm	54% (557.6sqm)	as approved	No (as approved)

Residential Open Space Area: OS1/2/3/4	Open space above ground max. 25% of total open space 155sqm	24% (149sqm)	as approved	
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 248sqm	38% (239sqm)	as approved	No (as approved)
4.1.5.3 Private Open Space	18sqm	506sqm (main alfresco, living terrace and pool areas)	as approved	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Battle axe lot shape (not visible from street)	as approved	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	3 car spaces	as approved	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

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 2021;
- 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. Mod2023/0666 for Modification of Development Consent DA2022/1471 granted for alterations and additions to a dwelling house including a swimming pool and spa on land at Lot 2 DP 558244, 8 B Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

Application Number	Determination Date	Modification description
PAN - 395283 Council MOD2023/0666	The date of this notice of determination	This development seeks consent for alterations and additions to an existing development consent DA2022/1471 located at 8 B Beatty Street Balgowlah Heights. Specifically, the works comprise of the following:

		<u>Lower Ground Level</u> - Gym and boat storeroom alterations including changes in RL levels, reconfiguration of stair layout to gym level; new retaining walls to path to marine store; changes in finished floor levels; deletion of sauna; reconfiguration of bathroom & joinery; additional stair risers; amended doors to NE and SE façade. <u>Ground level</u> - Reconfiguration of bathroom & guest bedroom entry; replace sliding doors between TV room & alfresco to a wall; shift wall location at the bottom of internal stairs; reconfigure comms/electrical room; delete stair to door 16; adjust stair location from alfresco to pool deck; change timber deck to stone. <u>Level 1 Bedroom</u> - Adjust door location to ensuite 2; reconfiguration of internal layout; amend balcony plan off bedroom 2. <u>Level 2 Living Rooms</u> - Delete door to study; amend pond shape; add additional planter; delete timber decking to south of pond for planter; amend window 13 shape to guest WC; amend WC layout; delete door between pantry & laundry; change door 09 to fixed window; extend deck to SE boundary; addition of a 700mm upstand to windows 14 & 15 in the family room. <u>Level 3 Entry Level</u> - Change louvre window to fixed glass; amend main robe layout; relocate garage door entry; amend entry layout, stair location & void; addition of a window (34); reconfigure window 04; new vehicle turntable; new opening in roof to area outside kitchen.
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Modified conditions

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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
1.01	C	Gym/Boat Store	Third Wave Design	15 November 2023
1.02	B	Ground Level & Pool	Third Wave Design	15 November 2023
1.03	B	Bedrooms Level 1	Third Wave Design	15 November 2023
1.04	B	Living Rooms Level 2	Third Wave Design	15 November 2023
1.05	C	Entry Level 3	Third Wave Design	15 November 2023
2.01	C	Section A	Third Wave Design	15 November 2023
3.01	C	North East Elevation	Third Wave Design	15 November 2023
3.02	C	South East Elevation	Third Wave Design	15 November 2023
3.03	C	North West Elevation	Third Wave Design	15 November 2023
3.04	B	South West Elevations	Third Wave Design	15 November 2023
3.05	B	Beach Elevation	Third Wave Design	15 November 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Basix Certificate	Certificate No. A464926_02	The Housing Energy Rating Company of Aust. Pty Ltd	8 September 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Add Condition Estuarine Planning Level Requirements to read as follows:

An Estuarine Planning Level (EPL) of 3.06m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 3.06m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 3.06m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 3.06m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 3.06m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 3.06 m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

3. Add Condition Installation and Maintenance of Sediment and Erosion Control to read as follows:

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

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

Signed



Reeve Cocks, Planner

The application is determined on 20/03/2024, under the delegated authority of:



Rodney Piggott, Manager Development Assessments