

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0316
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Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 2 DP 217340, 26 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA0085/2016 granted for demolition of existing structures and construction of a new dwelling
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Domenico Morello Giuseppe Morello Samina Morello
Applicant:	Domenico Morello

Application lodged:	14/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	6
Recommendation:	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 Local Environmental Plan 2013 - 4.6 Exceptions to development standards

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 - 3.4.3 Maintenance of Views

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

Manly Development Control Plan - 4.1.2.1 Wall Height

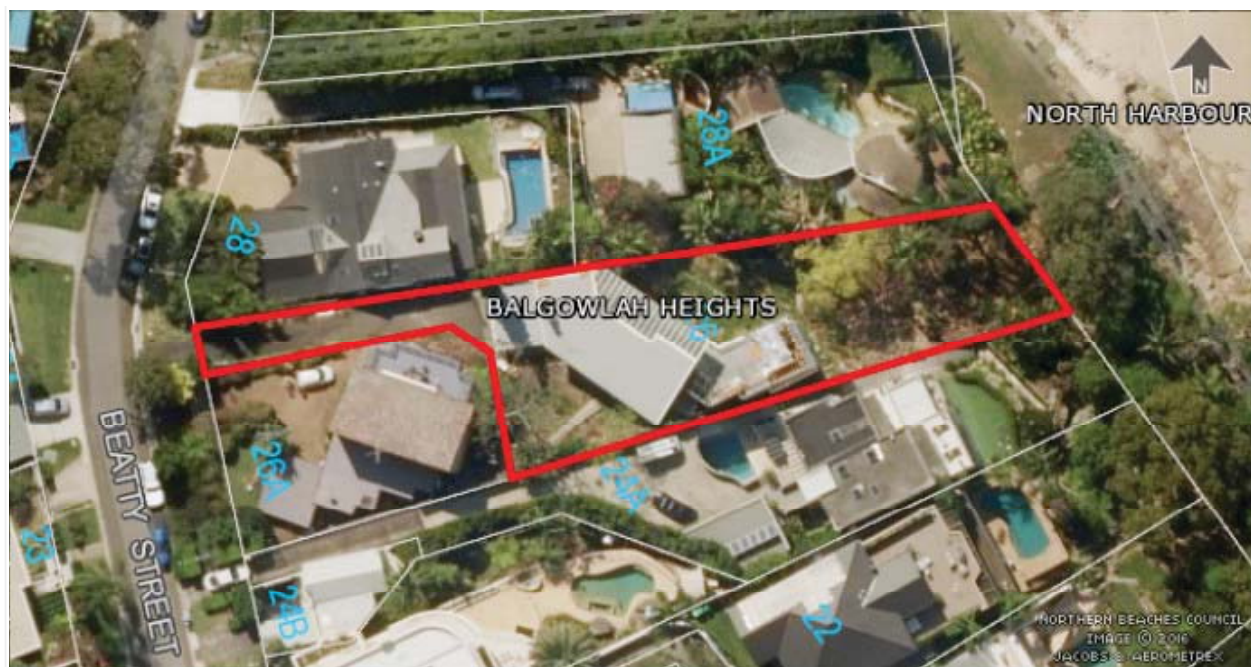
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 2 DP 217340 , 26 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject property is commonly known as 26 Beatty Street, Balgowlah and legally known as Lot 2 in DP 217340. The property is a battleaxe allotment and the subject site is the rear allotment. The subject site is located along the eastern side of Beatty Street. The property is accessed through an access handle which provides vehicular access to the subject site from Beatty Street. The site currently contains a multilevel dwelling and attached garage constructed to achieve the approved development application 85/2016. The property slopes from front to the rear towards the foreshore.

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:

DA85/2016 - for demolition and construction of a three (3) storey dwelling house with a triple garage, new driveway, front fence, retaining wall, removal of ten (10) trees, landscaping, swimming pool with spa and deck

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

- Erection of Balustrading to roof including an external access hatch/skylight
- Modifications to the external materials and colours

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 DA85/2016, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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 DA85/2016.
(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 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 by the development control plan, as the case may be.	See discussion on "Public Exhibition" in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (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>Clauses 54 and 109</u> of the EP&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. <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 clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <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

Section 79C 'Matters for Consideration'	Comments
	matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 79C (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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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 process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Robert Semsarian	24 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Ms Elizabeth Johnston	124 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mrs Elizabeth Karen Johnston	22 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mrs Greer Anne Couston	25 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Ms Robyn Kim Powell	24 B Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mrs Deborah Hui-Ling Priddle	31 Beatty Street BALGOWLAH HEIGHTS NSW 2093

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

- Privacy
- View loss including view loss due to potential structures/furnishings erected
- Non-compliance with building height control
- Non-compliance with Manly DCP 2013
- Precedent of roof top decks
- hard floor area ratio (Floor Space Ratio)
- unapproved works
- Overdevelopment
- not consistent with the surrounding neighbourhood

The matters raised within the submissions are addressed as follows:

- Privacy
Comment:
The proposal has been assessed below with regard to the objectives of Clause 3.4.2 Privacy and Security. In summary the proposal has adequate physical separation from the surrounding properties to ensure no unreasonable privacy impacts.
- View loss including view loss due to potential structures/furnishings erected
Comment:
The proposed development has been assessed below and found to achieve an acceptable level of view sharing. A condition of consent is recommended to ensure no structures such as umbrellas are erected on the roof.
- Non-compliance with building height control
Comment:
The non-compliance has been assessed below. In summary the non-compliance was found to be consistent with the objectives of the control and the E3 Environmental Management Zone.
- Non-compliance with Manly DCP 2013
Comment:
All non-compliances with the Manly DCP 2013 have been assessed below and found to be satisfactory.
- Precedent of roof top decks
Comment:
Any further Applications for rooftop decks in the area will undergo a merit assessment and be determined accordingly.
- hard floor area ratio (Floor Space Ratio)
Comment:
The proposal will not add to the hard floor area or Floor Space Ratio
- unapproved works
Comment:
In accordance with the decision by the NSW Land and Environment Court in Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240 modifications may be granted consent retrospectively provided they result in substantially the same development for which consent was originally granted and that there is no sound planning reason to refuse the application. In this regard the proposed modifications are considered to be satisfactory for

approval, subject to conditions.

- Overdevelopment

Comment:

The proposed glass balustrade is transparent and will not add to the visual bulk of the development. The proposal has been assessed below and was found to be satisfactory.

- not consistent with the surrounding neighbourhood

Comment:

A merit assessment has been conducted and the proposal has been found to be satisfactory. The proposed height of the roof area is consistent with the surrounding development and the modifications will not significantly add to the bulk or scale of the development.

MEDIATION

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

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

The proposal will remain consistent with the commitments of the BASIX Certificate submitted with the original application.

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	13.7m	14.7m - 10.6m	72%	No

Compliance Assessment

Clause	Compliance with Requirements
Part 4 Principal development standards	No
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes

Detailed Assessment

4.6 Exceptions to development standards

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision that in itself authorizes the development to be approved despite any breach of development standards. Section 96 is subject to its own stand-alone tests and does not rely upon Clause 4.6 in order to determine the modification application. In this regard, the merits of the departure have been assessed below with regards to the objectives of Clause 4.3 Height of buildings, the underlying objectives of the E3 Environmental Management Zone and Clause 4.6 Exceptions to development standards of the Manly LEP 2013.

The following assessment of the variation to Clause 4.3 - Height of Buildings has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	14.7m-10.6m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	72%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are:

(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 proposal is for a glass balustrade and access hatch on the approved roof area. The glass balustrade is clear and is not visually prominent from the streetscape. As such it does not result in a significant change to the roof form nor any significant impact on the streetscape character of the locality. The proposed access hatch is higher up the slope of the site to minimise the overall height of the structure and is consistent with the prevailing building height of the neighbouring properties. Furthermore the site is located on a battle axe lot and has a significant setback from Beatty Street. The proposed development is of a height and roof form that is consistent with the topographic landscape, prevailing building height and will not result in any unreasonable impacts on the streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposed access hatch is consistent with the prevailing building height of the locality and the clear glass balustrade does not result in any significant increase to the perceived bulk or scale of the development. The proposal does not result in an unreasonable bulk and scale within the locality.

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:

A view loss assessment was conducted below with regard to the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the proposal was found to be satisfactory subject to the recommended conditions of consent.

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 modifications will not result in any significant increase in overshadowing in the locality. The proposal will 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.

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

Comment:

The proposed balustrade and access hatch will not result in a significant increase to the height and bulk of the development on the site. The proposal has adequate regard to the environmental protection zone and the existing vegetation and topography of the surrounds. The proposal will not conflict with the bushland or surrounding land uses.

What are the underlying objectives of the zone?

In assessing the developments non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of the E3 Environmental Management zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposal is located over the existing built form and will not result in any unreasonable impact on the areas ecological, scientific, cultural or aesthetic values.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposed development will not result in any unreasonable impacts on the abovementioned values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposed modifications will not impact the tree canopies and will not dominate the natural scenic qualities of the foreshore.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation*

Comment:

The proposal will not negatively impact on nearby foreshores, significant geological features and bushland.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposal is located over the existing developed form and will not create any additional hard surfaces.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed balustrade is transparent and will not add to the bulk of the building. The proposed access hatch is located further up the slope to minimise the overall height of the development. The proposal is of a height and bulk that is consistent with the surrounding properties and has adequate regard to the existing vegetation and topography.

Is the variation to the development standard consistent with 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:

The proposed non-compliance is consistent with the objectives of the development standard and will not result in any unreasonable impacts within the locality. The requested degree of flexibility is appropriate in this circumstance.

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

Comment:

The proposal is appropriately designed to ensure no unreasonable impacts within the locality. The proposed degree of flexibility is satisfactory in this circumstance.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the

development standard.

Comment:

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision. As the application is not subject to Clause 4.6 the applicant is not required to submit a formal Clause 4.6 application. However, the Statement of Environmental Effects submitted with the application has provided the following justification as to the variation:

The balustrading extends above the LEP Height of Buildings limit, but does not create a non-compliance as the existing building has already been approved over the height limit. Given this is a minor transparent element it does not in any way contribute to the bulk or perceptible height of the building and does not offend the objectives of the standard as discussed below:

(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: There is no change to the built form and the building has been approved to step down the site with a reduced upper level concentrated to the western end of the site.

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

Comment: The perceptible scale of the building is not changed, the roof hatch is centralised, limited in area and the balustrade is clear glazed making it quasi non visible.

(c) to minimise disruption to the following:

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

Comment: The works are receive in terms of siting and materiality that within the surrounding landscape and layering of built form is not detectable from public places.

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

Comment: The works do not have any notable obstruction or impact on view particularly given the expansive panoramic views available to surrounding properties.

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

Comment: Views between public places are not affected.

(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 works do create any overshadowing of neighbouring living areas or private open spaces areas, and does not contribute to overshadowing of any public places.

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

Comment: The proposed works do not create any additional visual bulk such as to cause conflict with bushland or surrounding land uses.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

The statement of environmental effects adequately demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the non-compliance.

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Comment:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment:

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision. This application does not require the concurrence of the Director General.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1163	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4+)	8.8m	11m	No
	South: 8m (based on gradient 1:4+)	12.7m	14.7m	No
4.1.4.2 Side Setbacks	North 4.9m	North 2m	North 2m	No

	South 3.67m (based on wall height)	South 0.8m-2.8m	South 0.8m-2.8m	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (697.8m ²)	50%(580.8m ²) calculated from approved plans	60.34% (701.7m ²)	No
	Open space above ground 25% of total open space (175.4m ²)	14.7% (103.2m ²) calculated from approved plans	31.9% (224.1m ²)	

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.2.1 Wall Height	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.4.2 Side setbacks and secondary street frontages	No	Yes
4.1.4.4 Rear Setbacks	Yes	Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	Yes	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.1.1 Additional matters for consideration	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposal also includes modification to the external finishes in particular modification of the outer edges of the roof from the approved grey finish to white. Clause 3.4 Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise) c) recommends external finishes minimise reflectivity. After a visit to the site and the surrounding properties it is evident the development does not result in any excessive glare or reflectivity nuisance to the neighboring properties.

3.4.2 Privacy and Security

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;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The balustrade of the rooftop deck has a 1.5m setback from the northern and eastern elevations. The setback from the edge of the roof ensures that overlooking of the neighbouring properties is minimised. The southern balustrade has a 0.4m setback from the southern elevation. Adjacent to this elevation is private open space and a swimming pool of the neighbouring property. It is recommended a condition be imposed to require the southern balustrade be setback 1.5m from the edge of the roof on the southern side. Subject to the recommended condition of consent the proposal will not result in any unreasonable overlooking of the neighbouring properties. The rooftop deck has adequate physical separation from the surrounding properties to ensure no unreasonable loss of visual or acoustic privacy within the locality.

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

The proposal subject to the recommended conditions of consent will not result in any unreasonable impacts on privacy while maintaining access to light and air. The proposal will achieve a balanced outlook.

Objective 3) To encourage awareness of neighbourhood security.

The proposal will encourage an awareness of neighborhood security within the locality.

3.4.3 Maintenance of Views

During the notification period a number of objections raised concerns regarding a loss of views due to the development. An assessment of the view loss was conducted below with regard to the views planning principle established by the NSW Land and Environment Court .

“The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The views affected are water views.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views are obtained from the living rooms, bedrooms and private open spaces of the affected properties.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The following were taken from the living room and terrace of 24 Beatty Street.



These photos demonstrate that the proposal does not result in any significant view loss from 24 Beatty

Street.

The following photograph was taken from the terrace of the property at 24b Beatty Street.



The photograph demonstrates that the proposal results in minor view loss due to the access hatch.

The following photograph was taken from the dining room in a sitting position of 25 Beatty Street.



The photograph demonstrates the proposal results in a negligible impact on the views of 25 Beatty Street.

The following photograph was taken from the bedroom of 31 Beatty Street.



This photograph demonstrates that the proposal does not result in any significant obstruction of views.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The above photographs demonstrate that the proposal does not result in any significant loss of views from 31, 25 and 24 Beatty Street. The view loss from 24b Beatty street is negligible and is a result of the access hatch which is compliant with the height of buildings control. The proposed development is acceptable and will achieve a reasonable level of view sharing. A number of the submissions raised concerns regarding the affect of shading structures and furniture on the views. Given the exposure of the rooftop terrace to the elements the likelihood of the occupant to place shading structures on the roof is considered to be high. These structures would breach the building height control and result in an unreasonable loss of views to the surrounding properties. To ensure the proposal does not result in any unreasonable loss of views an ongoing condition of consent is recommended to prohibit the placement of furniture or shading structures on the roof terrace.

An assessment of the proposal with regard to the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 has been conducted below.

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

The proposal subject to the conditions of consent will provide appropriate view sharing for both the

future and existing development.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths). The proposal has been assessed above in accordance with the views planning principle established by the NSW Land and Environment Court and was found to provide for adequate view sharing within the locality.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan. The proposal will not result in any unreasonable view loss or view creep subject to the recommended conditions of consent.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The proposal is not compliant with the wall height control of the Manly DCP 2013 due to the addition of the glass balustrades. The Manly DCP 2013 does not contain objectives relating to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. An assessment of the non-compliance with regard to the relevant objectives has been conducted below.

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 proposal is for a glass balustrade and access hatch on the approved roof area. The glass balustrade is clear and is not visually prominent from the streetscape. As such it does not result in a significant change to the roof form nor any significant impact on the streetscape character of the locality. The proposed development is of a height and roof form that is consistent with the topographic landscape, prevailing building height and will not result in any unreasonable impacts on the streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposed clear glass balustrade does not result in any significant increase to the perceived bulk or scale of the development. The proposal does not result in an unreasonable bulk and scale within the locality.

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:

A view loss assessment was conducted below with regard to the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the proposal was found to be satisfactory subject to the

recommended conditions of consent.

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 modifications will not result in any significant increase in overshadowing in the locality. The proposal will 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.

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

Comment:

The proposed development will not result in a building height and bulk that is inconsistent with the zone, topography, bushland and surrounding land uses.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.2.1 Wall Height

The proposal is not compliant with the wall height control of the Manly DCP 2013 due to the addition of the glass balustrades. The Manly DCP 2013 does not contain objectives relating to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. An assessment of the non-compliance with regard to the relevant objectives has been conducted below.

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 proposal is for a glass balustrade and access hatch on the approved roof area. The glass balustrade is clear and is not visually prominent from the streetscape. As such it does not result in a significant change to the roof form nor any significant impact on the streetscape character of the locality. The proposed development is of a height and roof form that is consistent with the topographic landscape, prevailing building height and will not result in any unreasonable impacts on the streetscape character of the locality.

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

Comment:

The proposed clear glass balustrade does not result in any significant increase to the perceived bulk or scale of the development. The proposal does not result in an unreasonable bulk and scale within the locality.

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:

A view loss assessment was conducted below with regard to the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the proposal was found to be satisfactory subject to the recommended conditions of consent.

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 modifications will not result in any significant increase in overshadowing in the locality. The proposal will 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.

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

Comment:

The proposed development will not result in a building height and bulk that is inconsistent with the zone, topography, bushland and surrounding land uses.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 and the objectives specified in section 5(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

The proposal is not compliant with the side setback control due to the increased wall height from the clear glass balustrades. The proposal will maintain the approved side boundary setbacks of the building. An assessment of the proposal with regard to the objectives of the control has been conducted below.

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

The proposal is setback from the street and will maintain the spatial proportions of the approved development on the site. The proposal will maintain the existing streetscape within the locality.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*

- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

See also objectives at paragraph 3.4 Amenity.

The proposal has been assessed above with regard to the objectives of Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to be satisfactory subject to conditions.

The proposal will not result in any unreasonable overshadowing of the neighboring properties.

The proposal has been assessed above with regard to clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views Planning Principle established by the NSW Land and Environment Court and was found to be satisfactory subject to conditions.

The proposal does not result in any unreasonable impacts of the streetscape or traffic conditions within the locality.

Objective 3) To promote flexibility in the siting of buildings.

The requested flexibility is satisfactory in this circumstance.

Objective 4) To enhance and maintain natural features by:

accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;

ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and

ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

The proposal will maintain the natural features of the site.

Objective 5) To assist in appropriate bush fire asset protection zones.

The proposal will not impact any bushfire asset protection zones.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 (inclusive of Part 3) and the objectives specified in section 5 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

The proposal is not compliant with the total open space and above ground open space controls of the Manly DCP 2013. It is noted that the total open space will be increased from the approved situation. An assessment of the non-compliance with regard to the objectives of the control has been conducted below.

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

The proposal does not include the removal of any important landscape features or vegetation.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

The proposal will maintain the soft landscaped areas and the approved landscape plan. The proposal is not compliant with the above ground open space control however will maintain adequate open space at ground level to achieve an adequate level of amenity for the dwelling.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

The proposal will not result in any unreasonable overshadowing of the surrounding area. The proposal was assessed above with regard to the objectives of Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to achieve an adequate level of privacy within the locality. The proposal was assessed above in accordance with the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the development was found to achieve adequate view sharing subject to the conditions of consent.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

The proposal will maintain the approved impervious area on the site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

The proposal will not result in the spread of weeds or the degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

The proposal does not include the removal of any wildlife habitat or wildlife corridors.

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. Mod2017/0316 for Modification of Development Consent DA0085/2016 granted for demolition of existing structures and construction of a new dwelling on land at Lot 2 DP 217340,26 Beatty Street, BALGOWLAH HEIGHTS, 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
DA04 Roof and Site Plan - RevB	4 December 2017	Aleksandar Design Group
DA06 Elevations North and South - Rev B	4 December 2017	Aleksandar Design Group
DA07 Elevations East and West - Rev B	4 December 2017	Aleksandar Design Group

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

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

B. Add Condition ANS07A to read as follows:

Privacy

The balustrade is to be setback a minimum of 1.5m from the southern edge of the building.

Reason: To minimise the loss of privacy to the neighbouring property.

C. Add Condition ANS07B to read as follows:

Views

No structures temporary or permanent are to be placed on the roof terrace.

Reason: To minimise loss of views.

ATTACHMENT A

Notification Plan	Title	Date
 2017/528686	Plan - Notification	07/12/2017

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2017/521447	Report - Statement of Environmental Effects	07/12/2017
 2017/521449	Plans - Master Set	07/12/2017
 2017/528686	Plan - Notification	07/12/2017
 2017/521445	Letter's of Support	07/12/2017
 MOD2017/0316	26 Beatty Street BALGOWLAH HEIGHTS NSW 2093 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	14/12/2017
 2017/525437	DA Acknowledgement Letter - Domenico Morello	16/12/2017
 2017/527428	Submission - Semsarian - Web	18/12/2017
 2017/528689	Modification Application Form	19/12/2017
 2017/528691	Applicant Details	19/12/2017
 2017/535359	DA Acknowledgement Letter (not integrated) - Domenico Morello	21/12/2017
 2017/535406	Notification Letter - 29	21/12/2017
 2017/541619	Submission Acknowledgement Letter - Robert Semsarian - SA2017/527428	28/12/2017
 2018/000081	Online Submission - Johnston	31/12/2017
 2018/000410	Submission - Johnston	31/12/2017
 2018/000192	Submission Acknowledgement Letter - Elizabeth Johnston - SA2018/000081	02/01/2018
 2018/001655	Coastal Management Referral - MOD2017/0316 - 26 Beatty Street, Balgowlah Heights	02/01/2018
 2018/003544	Submission Acknowledgement Letter - Elizabeth Karen Johnston - SA2018/000410	03/01/2018
 2018/004679	Online Submission - Peach	03/01/2018
 2018/059115	Online Submission - Couston	13/01/2018
 2018/060897	Submission Acknowledgement Letter - Greer Anne Couston - SA2018/059115	16/01/2018
 2018/070022	Submission - Powell - Web	22/01/2018
 2018/070578	Submission Acknowledgement Letter - Robyn Kim Powell - SA2018/070022	22/01/2018
 2018/080475	Online Submission - Priddle	25/01/2018
 2018/126852	DELETE	21/02/2018