

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0330
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 1206809, 45 A Fisher Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA191/2015 granted for construction of a new dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Lorraine Gwendoline Gregory
Applicant:	Cain Constructions Pty Ltd

Application lodged:	19/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	0
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 Development Control Plan - 4.1.4.2 Side setbacks and secondary street frontages

Manly Development Control Plan - 4.1.4.4 Rear Setbacks

SITE DESCRIPTION

Property Description:	Lot 1 DP 1206809 , 45 A Fisher Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site is commonly known as 45 Fisher Street Balgowlah Heights and legally known as Lot A in DP 355417. The works relate to lot 1 of the subdivision approved under DA 230/2014. The site is located on the western side of Fisher Street. The site is irregular in shape and the subdivided lot has a frontage of 16.745m to Fisher Street. The subdivided lot has a length of 28.1m on the northern side, a length of 33.636 on the southern side and a width at the rear of 19.015m. The subdivided site has an area of 505m². The site currently contains a single storey dwelling house with detached garage. The site slopes from the south western side down to the north eastern side of the site. The surrounding area includes dwelling houses.

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:

A search of Council's records has revealed the following:

Application 11.2015.191.1 for Construction of a detached two (2) storey dwelling house with double garage and landscape for approved Lot 1 under DA230/2014

Application 10.2015.191.1 for Construction of a detached two (2) storey dwelling house with double garage and landscape for approved Lot 1 under DA230/2014 (18/11/2015)

Application Mod2017/0330 for Modification of Development Consent DA191/2015 granted for construction of a new dwelling house

Application 10.2014.230.1 for Demolition of existing structures and two (2) lot Torrens Title Subdivision - 4607/L (21/01/2015)

Application 15.2014.230.1 for 4607/L - Demolition of existing structures and two (2) lot Torrens Title Subdivision was on (07/10/2015)

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a modification to the approved dwelling under DA191/2015 for the following:
Ground Floor

- Deletion of columns
- Change to floor level (RL44.5 to RL 45.25)
- Addition of shower and WC

First Floor

- Change to floor level (RL 47.5 to 48.08)
- Removal of bedroom and WC (including windows)
- Re-configure existing bedrooms
- Deletion of planter box and reduction to balcony
- Replace planter box barrier with glass balustrade
- Timber deck access platform
- Change of window style to bedroom
- Replace centre balcony window with louver style
- Change of materials to eastern elevation (cement render to cladding)
- Delete privacy screen at southern end of balcony

Second Floor

- Change floor level (RL 50.6 to 50.94), ceiling level (RL53.3 to 53.54) and reduce roof (RL55.122 to 55.09)
- Reduction to study room
- Timber deck to western elevation
- Change of materials to eastern and western elevations (cement render to cladding)
- Delete privacy screen at southern end of balcony
- Replace centre balcony window with louver style
- Modification to highlight window at northern wall

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 DA191/2015, 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:	

Section 96(1A) - Other Modifications	Comments
(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 DA191/2015.
(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.	No submissions were received in relation to this application.

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	Manly Development Control Plan applies to this proposal.

Section 79C 'Matters for Consideration'	Comments
of any development control plan	
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 matter has been addressed via a condition in the original consent. <u>Clause 143A</u> 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	(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

Section 79C 'Matters for Consideration'	Comments
economic impacts in the locality	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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Modification request to delete ‘planter box’ to the first floor of the dwelling raises no objection, subject to the application satisfying (2LD03).

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

Nil

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.269m	7.237m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.44:1	FSR: 0.42:1	N/A	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 505m ²	Requirement	Approved	Proposed	Complies
4.1.4.2 Side Setbacks and Secondary Street Frontages (north)	6m (based on wall height)	2m	1.1m (deck)	No
4.1.4.4 Rear Setbacks	8m	3.552-8.6m	0.3-8.6m (including deck and dwelling)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (277.75m ²)	55.6% (280.78m ²)	55% (278m ²)	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (97m ²)	78.06% (219.18m ²)	69% (191.18m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.1.1.1 Complementary Design and Visual Improvement	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1.2 Front Fences and Gates	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
4.1.4.1 Street Front setbacks	Yes	Yes
4.1.4.2 Side setbacks and secondary street frontages	No	Yes
4.1.4.4 Rear Setbacks	No	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

4.1.4.2 Side setbacks and secondary street frontages

Although the proposal is inconsistent with the numerical controls for setbacks under the Manly DCP, it is consistent with the objectives of the clause as follows:

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 includes works such as modifications to the balconies, changes to windows and the addition of a timber deck which are within the numerical control required for side setbacks. However, the bulk of the existing dwelling will remain relatively unchanged and landscaping to the front of the site will also remain as approved. As such, the presentation of the dwelling to the street will be appropriate in terms of spatial proportions and landscape character.

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.*

The proposal does not involve the addition of any bulk which could cause any unreasonable impact on local amenity. In addition, the proposed changes to the balconies and addition of the deck provide a reasonable combination of design and location to ensure appropriate privacy. This particularly includes a reasonable physical separation to adjoining living areas as well as a reasonable extent and orientation for the proposed areas in terms of overlooking.

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

The proposed dwelling will be sited in the same location with minor internal changes as well as modifications to windows and balconies. Along with the new deck, the siting of these new features will be reasonable due to the minimised extent and physical separation to neighboring living areas.

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.*
There are no proposed changes to natural features or open space. The proposed non-complaint setbacks do not relate to the maintenance or enhancement of natural features on site in this circumstance due to the works being within the existing building envelope.

Objective 5) To assist in appropriate bush fire asset protection zones.
Not applicable.

4.1.4.4 Rear Setbacks

See assessment against objectives for setbacks above.

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. Mod2017/0330 for Modification of Development Consent DA191/2015 granted for construction of a new dwelling house on land at Lot 1 DP 1206809, 45 A Fisher 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
S96- Site Plan	13/08/2015	Cain Constructions
S96- East Elevation	13/08/2015	Cain Constructions
S96- South Elevation	13/08/2015	Cain Constructions
S96- Ground Floor Plan	13/08/2015	Cain Constructions
S96- First Floor Plan	13/08/2015	Cain Constructions
S96- Second Floor Plan	13/08/2015	Cain Constructions
S96- West Elevation and Section A-A	13/08/2015	Cain Constructions

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

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

Signed



Thomas Prosser, Planner

The application is determined under the delegated authority of:



Rodney Piggott, Manager Development Assessments

ATTACHMENT A

Notification Plan	Title	Date
 2017/537142	Plan - Notification	22/12/2017

ATTACHMENT B

Notification Document	Title	Date
 2017/537520	Notification Map	22/12/2017

ATTACHMENT C

Reference Number	Document	Date
 2017/530156	DA Acknowledgement Letter - Cain Constructions Pty Ltd	19/12/2017
 MOD2017/0330	45A Fisher Street BALGOWLAH HEIGHTS NSW 2093 - Section 96_1a - Minor Environmental Impact	19/12/2017
 2017/537139	Modification Application Form	22/12/2017
 2017/537141	Applicant Details	22/12/2017
 2017/537142	Plan - Notification	22/12/2017
 2017/537143	Report - Statement of Environmental Effects	22/12/2017
 2017/537144	Plans - External	22/12/2017
 2017/537145	Plans - Internal	22/12/2017
 2017/537146	Plans - Master Set	22/12/2017
 2017/537501	DA Acknowledgement Letter (not integrated) - Cain Constructions Pty Ltd	22/12/2017
 2017/537520	Notification Map	22/12/2017
 2017/537525	Notification Letter - 19	22/12/2017
 2018/062889	Playoust Churcher Architects re NOTICE OF PROPOSED DEVELOPMENT - Modification No Mod2017/0330- (DA0191/2015) 45A Fisher Street Balgowlah Heights - request for additional information on behalf of K Churcher	17/01/2018