

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0395
----------------------------	--------------

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 17A DP 350345, 42 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2020/1263 granted for Alterations and additions to a dwelling house
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:	Tieying Huang Julie Huang
Applicant:	Timothy Hugh West

Application Lodged:	08/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/08/2022 to 01/09/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 32.9%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks consent for changes as follows:

Level 1

- Internal change to Bath 1
- Relocate Laundry into Gym
- Rotate external BBQ joinery

Level 2

- Delete rear pergola
- Delete northern privacy screen required by condition 7A
- Reconstruct external northern stair
- New roof over Kitchen, increased in height

Level 3

- Internal change to Ensuite 3
- Change D19 to door and window
- New hipped roof, lower overall profile

Amendments to Proposal

Following lodgement of the application, amendments were made to the proposal as follows:

- Include reconstruction of the external northern stair between levels 2 and 3
- Include deletion of the approved pergola over the level 2 balcony
- Include change to door D19
- Include relocation of the laundry from the stair void to the gym

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)

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

SITE DESCRIPTION

Property Description:	Lot 17A DP 350345 , 42 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Beatty Street. The site is irregular in shape with a frontage of 15.41m along Beatty Street and a depth of 55.955m. The site has a surveyed area of 845.5m². The site is located within the C3 Environmental Management zone and accommodates an existing three-storey dwelling. The site slopes 15.1m from from (west) to rear (east). The site contains a variety of vegetation within the rear yard, including 7 significant trees. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by multi-storey detached dwellings.

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:

- DA0392/2001 - Alteration and/or Additions to existing Dwelling and Swimming Pool - Refused 1 March 2002.
- DA0590/2003 - New concrete swimming pool - Approved 11 March 2004.
- DA0466/2006 - Alterations and Additions - AMENDED PLAN - Alterations & Additions to an existing Dwelling house - Approved 8 July 2008.
- DA0466/2006 - Part 2 - Section 96 to modify approved Alterations and additions to dwelling house - Approved 26 June 2010.
- DA0466/2006 - Part 3 - Section 96 to modify approved Alterations and Additions to dwelling house - Approved 26 September 2011.
- DA2020/1263 - Alterations and additions to a dwelling house - Approved 26 February 2021.
- Mod2021/0880 - Modification of Development Consent DA2020/1263 granted for Alterations and additions to a dwelling house - Approved 16 March 2022.

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 DA2020/1263 and Mod2021/0880, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: The internal changes will not result in any material impacts to surrounding properties or the public domain. The

Section 4.55(1A) - Other Modifications	Comments
	external changes are minor in extent and impact, noting that the proposed new roof design will reduce the height and bulk of the approved dwelling, and will improve solar access to the adjoining property to the south. Overall, there is no significant change to the approved dwelling form and minimal impact to surrounding properties.
(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 DA2020/1263 for the following reasons: The consent as proposed to be modified is substantially the same development as that for which the consent was originally granted. The proposed development retains the single residential use and does not alter the intent of the lot to be developed. The proposed modification involves internal reconfigurations, minor external changes and a new roof. As such, the development remains materially the same as originally approved. As such, the modified application is “substantially the same development” as the originally approved development and therefore may be considered under Section 4.55(1A).
(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 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)(iia) – 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. <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 - 1991: 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	(i) Environmental Impact The environmental impacts of the proposed

Section 4.15 'Matters for Consideration'	Comments
impacts on the natural and built environment and social and economic impacts in the locality	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 The Fire Consultants, dated 26 July 2022) 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 development application has been publicly exhibited from 18/08/2022 to 01/09/2022 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
NECC (Bushland and Biodiversity)	The proposed modifications are generally within the existing built form and will not result in additional impact to native vegetation or wildlife

Internal Referral Body	Comments
	habitat.
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; • Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.12); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. The application is supported without conditions.
NECC (Riparian Lands and Creeks)	This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. No objections.
Parks, reserves, beaches, foreshore	The application is for modification to development consent DA2020/1263 as described in the reports and illustrated in the plans. On review Parks Reserves and Foreshores Referral raise no concerns with the modification as the landscape and waterway character is not altered from the development consent.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	This modification application has been referred as it adjoins a heritage item, being Item 139 - Trees, Forty Baskets Beach Reserve (off Beatty Street), listed in Schedule 5 of Manly LEP 2013. It is also in the vicinity of Item 11 - Harbour foreshores.
	Details of heritage items affected
	Details of these heritage items in the vicinity, as contained within the Heritage Inventory, are:

Internal Referral Body	Comments		
	Item I39 - Trees, Forty Baskets Beach Reserve (off Beatty Street) <u>Statement of Significance:</u> Listed for its aesthetic importance. <u>Physical Description:</u> Line of Phoenix Canariensis (Canary Island Palms) forming visual screen and backdrop between beach front and suburban development.		
	Item I1 - 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		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
This application proposes modifications to Consent DA2020/1263, which approved alterations and additions to the existing multi-level dwelling on the site. This previous application was not referred for heritage comment. The proposed modifications consist of minor internal changes and some minor external changes, including to the roof. There is no noticeable change to the bulk or scale of the dwelling as a result of these modifications. The dwelling is located some 28 metres from its eastern boundary, which adjoins Forty Baskets Reserve and the heritage listed trees. There is one of the heritage listed Canary Island Palms located close to the boundary of this property, however, none of the works will impact the adjoining reserve or the heritage listed palms on this reserve. There will also be no impact on the harbour foreshore heritage item, as the property is separated from the foreshore by Forty Baskets Reserve.			

Internal Referral Body	Comments
	Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of MLEP 2013:</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 Further Comments COMPLETED BY: Janine Formica, Heritage Planner DATE: 9 August 2022

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<u>AHO Comments</u> Reference is made to the proposed modifications of development consent DA2020/1263 at the above area and Aboriginal heritage. No sites are recorded in the proposed modification area 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 Aboriginal heritage sensitivity and the potential to contain Aboriginal sites. 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. 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

External Referral Body	Comments
	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.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A386887_07 dated 10 September 2021).

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 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:

Subject to compliance with the previously imposed conditions, the proposed modifications will not result in further adverse impacts on the coastal environment area.

- 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:

The proposed modifications are to be located generally within the footprint of previously approved works. The location, bulk and scale of the proposed modifications will not be substantially altered, and as such will not result in adverse impacts such upon the coastal environment area.

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
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) 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 adverse
 - ii) 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:

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 nature of the modifications are such that (subject to previously imposed conditions of consent) that the development will not result in an increased risk of coastal hazards.

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	11.8m (excavated level) 8.015m (extrapolated natural ground)	11.3m (excavated level) 8.2m (extrapolated natural ground)	32.9%	No
Floor Space Ratio	0.4:1 338.2m ²	368.5m ²	Unchanged	N/A	No (as approved)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.3m (excavated level) 8.2m (extrapolated natural ground)
Percentage variation to requirement:	32.9%

Assessment of request to vary a development standard:

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

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be

approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the C3 Environmental Management zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

The proposal results in a lower overall roof height in comparison to the approved development. The proposed roof design will reduce the visual bulk of the dwelling and the amenity impacts to adjoining properties, particularly in relation to overshadowing. The proposal is consistent with the objectives of the height of buildings development standard as assessed below.

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

The previously approved building height of 8.015m was calculated in accordance with *Bettar v Council of City of Sydney*, whereby building height is measured to the extrapolated natural ground level. However, following the recent decision in *Merman Investments Pty Ltd v Woollahra Municipal Council*, building height must now be measured to the existing excavated ground level. The "Merman" approach of measuring building height results in a vastly greater height of 11.3m, whereas the previous "Bettar" method would have given a marginally increased (and compliant) height of 8.2m above extrapolated natural ground level.

It is also noted that the proposed modification lowers the roof ridge height from RL25.23 to RL24.81 and reduces the wall height at the southern elevation by up to 1.8m.

Given the compliant height as measured to the extrapolated natural ground level and the visual and amenity improvements resulting from the rationalised roof design, it is considered that there are sufficient environmental planning grounds to justify the technical variation to the building height development standard.

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.

4.3 Height of buildings

(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 modified proposal remains consistent with the topography, prevailing building height and desired future streetscape in the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposed changes to the roof form reduce the bulk and scale of the building, particularly as viewed from the adjoining property to the south.

c) to minimise disruption to the following—

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

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

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

Comment:

The proposal will not adversely impact views to, from or between nearby residential development and public spaces.

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 proposal improves solar access to the adjoining property to the south.

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 proposal has adequate regard for the natural features of the site and will not adversely impact surrounding public or private land.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposed modifications relate to alterations and additions to an existing dwelling.

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

Comment:

The proposed changes are relatively minor in the context of the existing dwelling and will not have an adverse impact on the above 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 proposal will not adversely impact the tree canopy or 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 proposed modification will not unreasonably impact on nearby foreshores, geological features or 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 proposed changes relate to the approved development footprint and will not alter any approved landscaped or hard surfaces on the site.

- *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 height and bulk of the dwelling are compatible with the existing vegetation and topography of the site and will not conflict with any surrounding land uses.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent

to be granted.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

4.4 Floor space ratio

The proposed modification does not alter the previously approved FSR variation for the development.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 845.5m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 8m (based on gradient 1:1.86)	L2 Balcony: 4m	Unchanged	Yes
		L3 Bed: 8.75m	Unchanged	No (as approved)
	S: 8m (based on gradient 1:2.67)	10.6m	9.3m	No (as approved)
4.1.2.2 Number of Storeys	2	3	Unchanged	No (as approved)
4.1.2.3 Roof Height	Height: 2.5m	3.2m	2.5m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	2.26m	Unchanged	No (as approved)
4.1.4.2 Side Setbacks and Secondary Street Frontages	N L2 Balcony: 1.33m	1.23m	Unchanged	No (as approved)
	N L3 Bed: 2.9m	1.55m	Unchanged	No (as approved)
	S: 3.1m	1.135m	Unchanged	No (as approved)
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	29.53m	Unchanged	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% of site area 507.3m ²	65.07% 550.2m ²	Unchanged	Yes
	Open space above ground 25% of total open space	6%	Unchanged	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 202.92m ²	46.5% 255.9m ²	Unchanged	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	Unchanged	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Compliance with control

The proposed modification results in improved sunlight access to the north-facing level 3 windows of 40 Beatty Street throughout the day. The proposal will not materially alter sunlight access to the private open spaces of No. 40.

3.4.2 Privacy and Security

The proposal seeks the deletion of condition 7A requiring the provision of a privacy screen at the northern elevation of the level 2 balcony.

Given the increased setback to this balcony as a result of the development, the existing screening provided at the southern elevation of 44 Beatty Street and the impact that the required screen would have on the available views from the subject balcony, the screening is not considered necessary in this case. It is also noted that the usability of the balcony is reduced by virtue of the deletion of the previously approved pergola. As such, condition 7A is recommended to be deleted as requested.

The remaining changed proposed as part of the modification will not result in any unreasonable privacy impacts.

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

The proposed modification reduces the approved southern wall height from 10.6m to 9.3m. The approved northern wall heights remain unchanged.

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

The proposed modification retains the previously approved northern and southern side setback non-compliances.

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. Mod2022/0395 for Modification of Development Consent DA2020/1263 granted for Alterations and additions to a dwelling house on land at Lot 17A DP 350345, 42 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
A01 Site & Roof Plan	Issue Q, 2 September 2022	THW Architects
A02 Level 1 Floorplan	Issue Q, 2 September 2022	THW Architects
A03 Level 2 Floorplan	Issue Q, 2 September 2022	THW Architects
A04 Level 3 Floorplan	Issue Q, 2 September 2022	THW Architects
A10 North Elevation	Issue Q, 2 September 2022	THW Architects
A11 South Elevation	Issue Q, 2 September 2022	THW Architects
A12 East Elevation	Issue Q, 2 September 2022	THW Architects
A13 West Elevation	Issue Q, 2 September 2022	THW Architects
A20 Section 1	Issue Q, 2 September 2022	THW Architects
A21 Section 2	Issue Q, 2 September 2022	THW Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bush Fire Hazard Assessment Report	Issue 3, 26 July 2022	The Fire Consultants
BASIX Certificate No. A386887_09	29 July 2022	THW Architects

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

c) The development is to be undertaken generally in accordance with the following:

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

B. Add Condition 9A. Aboriginal Heritage to read as follows:

9A. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

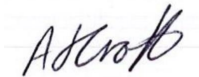
Reason: Aboriginal Heritage Protection.

C. Delete Condition 7A. Privacy Screen to read as follows:

7A. DELETED

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

Signed



Adam Croft, Planner

The application is determined on 09/09/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments