

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0471
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Responsible Officer:	Reeve Cocks
Land to be developed (Address):	Lot 3 DP 26655, 104 Balgowlah Road BALGOWLAH NSW 2093
Proposed Development:	Modification of Development Consent DA2021/1884 granted for Alterations and additions to a dwelling house including a carport and fencing
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Lauren Elizabeth Pevy

Application Lodged:	02/09/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	10/09/2024 to 24/09/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for Modification of Development Consent DA2021/1884 granted for Alterations and additions to a dwelling house including a carport and fencing.

Specifically the following works:

- Deletion of approved carport.
- Deletion of approved roof and awning extension (existing building to be retained).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 3 DP 26655 , 104 Balgowlah Road BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Balgowlah Road and is legally identified as Lot 3 DP26655. The site is regular in shape with a frontage of 16.765m along Balgowlah Road and a depth of 33.55mm. The site has a surveyed area of 562.1m². The site is located within the R1 General Residential from MLEP 2013 and accommodates a single storey red brick residential dwelling. The site does contain a driveway crossover along the western side of the site however due to the steep driveway access, off street parking on the site is not utilised. The site contains a 16% slope from the southern (front) boundary to the northern (rear) boundary. The site is turfed within the front and rear yard with an inground swimming pool located in the backyard also. The site does not contain any significant vegetation and does not propose the removal of any vegetation. The rear of the site adjoins Burnt Creek Reserve and is

identified as bush fire prone land.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwellings of a similar size and scale along the northern side of Balgowlah Road with larger residential dwellings located along the southern side of Balgowlah Road with garages located to the front boundary.

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:

DA2021/1884 - Alterations and additions to a dwelling house including a carport and fencing. Approved by delegated authority 9 December 2021.

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 DA2021/1884, 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 development is for the deletion of an approved carport. The carport has not been constructed and it is considered that the application will have no 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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/1884 for the following reasons: • The use of the development is not proposed to be changed. • The bulk and scale of the development is not proposed to be increased.
(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 application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55(1A) - Other Modifications	Comments
the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <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.

Section 4.15 'Matters for Consideration'	Comments
	<u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62</u> and/or <u>64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah/Manly/Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and

Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions, dated 26 August 2024) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 10/09/2024 to 24/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

No referrals were sent in relation to this application

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 (Sustainable Buildings) 2022

A BASIX certificate was submitted with the original development application (see Certificate No. A436699 dated 21 October 2021).

The modification applications seeks to delete the approved carport and attached awning structure resulting in renovations works costing \$43,350.00 which is below the BASIX threshold.

An updated BASIX certificate is therefore not required.

SEPP (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	5.5m	-	-	Yes
Floor Space Ratio	FSR: 0.5:1	as existing	-	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.6 Riparian land and watercourses	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 562.1m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	E: 7m (based on gradient 1:11)	5.5m	2.46m (carport fence)	Yes

	W: 7.11m (based on gradient 1:9)	4.1m	1.73m (carport fence)	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.4m	roof deleted	Yes
	Pitch: maximum 35 degrees	23 degrees	roof deleted	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Nil	-	as approved
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1.83m (based on wall height)	E: 1.0m	-	as approved
	W: 1.46m (based on wall height)	W: 0.2m	-	as approved
4.1.4.4 Rear Setbacks	8m	as existing	-	as existing
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (309.15sqm)	43% 241.2sqm	-	as approved
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (108sqm)	53.5% (165.5sqm)	-	as approved
4.1.5.3 Private Open Space	18m ² per dwelling	>18m ²	-	as approved
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	4.7m	-	as approved
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space (existing)	-	as existing

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
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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 Special Character Areas and Sites	Yes	Yes
5.4.4 Riparian Land and Watercourses	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0471 for Modification of Development Consent DA2021/1884 granted for Alterations and additions to a dwelling house including a carport and fencing on land at Lot 3 DP 26655, 104 Balgowlah Road, BALGOWLAH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-464775 Council MOD - Mod2024/0471	The date of this notice of determination	Modification of Development Consent DA2021/1884 granted for Alterations and additions to a dwelling house including a carport and fencing. Add Condition No.1A - Approved Plans and supporting documentation.

Modified conditions

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

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A3 11.03	A	DA - Site Plan and Analysis	Canopy Design	26 July 2024
A3 30.03	A	DA - Elevations and Section	Canopy Design	26 July 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A436699	Network Irrigation P/L	21 October 2021
Bushfire Report	-	Building Code & Bushfire Hazard Solutions	26 August 2024

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

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

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

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

Signed



Reeve Cocks, Planner

The application is determined on 26/09/2024, under the delegated authority of:



Rodney Piggott, Manager Development Assessments