

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0311
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Responsible Officer:	Lauren Roberts
Land to be developed (Address):	Lot 1 DP 165269, 39 Boyle Street BALGOWLAH NSW 2093
Proposed Development:	Modification of Development Consent DA0013/2016 granted for alterations and additions to an existing dwelling house
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
Owner:	
Applicant:	Louise Diane Kuchel

Application lodged:	13/12/2017
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:	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 - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 1 DP 165269 , 39 Boyle Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of a single allotment located on the western side of Boyle Street, Balgowlah. The site is regular in shape with a frontage of 10.95m along Boyle Street and a depth of 45.42m. The site has a surveyed area of 493m². The site is located within the General Residential from MLEP 2013 zone and accommodates a single storey, heritage listed rendered and clad house. The site has a slight fall in a northwest direction. The site does not contain any significant topographical features. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of one to two storey dwelling houses in landscaped settings.

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:

DA91/1995: Rear additions to an existing Settlers Cottage

DA13/2016: Additions and alterations to an existing dwelling house including a two (2) storey rear addition, new carport, swimming pool and landscaping.

PROPOSED DEVELOPMENT IN DETAIL

The application to modify DA2017/0311 includes:-

- relocation of the swimming pool located at the rear of the dwelling to run parallel to the northern boundary; and
- remedial works to the existing dwelling including replacement of existing walls and piers at ground floor level due to structural inadequacy.

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 DA13/2016, 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 DA13/2016.
(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.	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 of any development control plan	Manly Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – 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 matter has been addressed via a condition in the original consent. <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 matter has been addressed via a condition in the

Section 79C 'Matters for Consideration'	Comments
	original consent. <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 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 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

Internal Referral Body	Comments
Landscape Officer	Following the assessment of the existing adjoining property tree impact by Rain Tree Consulting, and subsequent pool re-location as illustrated by the amended Landscape Plans by Babbington Landscapes, the amended plans with relocated pool is now acceptable for approval.
Strategic & Place Planning (Heritage Officer)	The application is a S.96, substantially the same as the originally approved DA. Therefore, it is fair to assess that impact of the current proposal will be closely similar to the impact of the previously approved DA. Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required. Proposal is acceptable without conditions.

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.

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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.

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	7.0m	7.0m	N/A	Yes
Floor Space Ratio	FSR: 0.60:1 (295.8m ²)	FSR: 0.41:1 (203.5m ²)	FSR: 0.41:1 (203.5m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 493m²	Requirement	Approved	Proposed	Complies
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (271m ²)	34% (167.5m ²)	35% (174.6m ²)	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (61m)	(168.5m ²)	(147m ²)	Yes
	1 native trees	1 trees	1 trees	Yes
4.1.5.3 Private Open Space	18m per dwelling	>18 sqm	>18sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	<1m	<1m	Yes
	1m curtilage/1.5m water side/rear setback	0.6m/1.5m	0.9m/1.5	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
3.2.1 Consideration of Heritage Significance	Yes	Yes
3.2.2 Alterations or Additions to Heritage Items or Conservation Areas	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.2.2 Requirements for other DAs	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	No	Yes
4.1.5.2 Landscaped Area	Yes	Yes
4.1.5.3 Private Open Space	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.9.1 Height above ground	Yes	Yes
4.1.9.2 Location and Setbacks	No	Yes
4.1.9.3 Proportion of Total Open Space	Yes	Yes
4.1.9.4 Other matters - sewer connections, pumps, structural certificates, rainwater tank and pool blankets	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

Detailed Assessment

4.1.5 Open Space and Landscaping

Description of non-compliance

DA13/2016 was approved with 167.5m² of Total Open Space. The proposed relocation of the pool will result in 174.6m² (35%) of Total Open Space.

The Control requires 271m² (55%).

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*
- *To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- *To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- *To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*
- *To minimise the spread of weeds and the degradation of private and public open space.*
- *To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The proposed modification to relocate the swimming pool will better the situation on site in terms of Total Open Space as approved under DA13/2016. Having regard to this and the objectives above, the proposal will provide a suitable level of soft landscaping that will enhance the amenity of the site and streetscape.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposed relocation of the swimming pool will result in the swimming pool deck being set back 0.9m from the northern side boundary of the site.

The Development control for swimming pools requires the deck and concourse area of the pool to be setback a minimum of 1m from the side/rear setbacks.

Merit Consideration

With the regard to the consideration for a variation, the development is considered against the underlying objectives of the Control as follows:

- *To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*

- *To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*
- *To integrate landscaping*
- *To become an emergency water resource in bush fire prone areas.*

Comment:

Having regard to the above objectives, the landscape screening (mature height of 6m) along the northern side boundary of the site will ensure that both privacy and amenity of neighboring properties is maintained. Overall, the proposed variation is minor in nature and will not adversely impact surrounding properties.

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

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. Mod2017/0311 for Modification of Development Consent DA0013/2016 granted for alterations and additions to an existing dwelling house on land at Lot 1 DP 165269,39 Boyle Street, BALGOWLAH, 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
DA02 - Rev B	07/11/2016	Hobbs Jamieson Architecture
DA03 - Rev C	14/12/2016	Hobbs Jamieson Architecture
DA04 - Rev B	07/11/2016	Hobbs Jamieson Architecture
DA05 - Rev C	14/12/2016	Hobbs Jamieson Architecture

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Amended Landscape Concept Plan	27/11/2017	Babbington Landscapes

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

B. Delete Condition ANS02

C. Delete Condition ANS04

E. Add Condition 48A (5LD01) to read as follows:

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately

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

Signed



Lauren Roberts, Planner

The application is determined under the delegated authority of:



Rodney Piggott, Manager Development Assessments

ATTACHMENT A

Notification Plan	Title	Date
 2017/530868	Plan - Notification	19/12/2017

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2017/529490	Plans - Landscape	01/12/2017
 2017/518134	Report - Statement of Amendment	11/12/2017
 2017/518133	Report - Arborist	11/12/2017
 2017/518131	Plans - External	11/12/2017
 MOD2017/0311	39 Boyle Street BALGOWLAH NSW 2093 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	13/12/2017
 2017/525372	DA Acknowledgement Letter - Louise Diane Kuchel	16/12/2017
 2017/529494	Plans - Master Set	19/12/2017
 2017/529491	Plans - Internal	19/12/2017
 2017/529488	Applicant Details	19/12/2017
 2017/529484	Development Application Form	19/12/2017
 2017/530175	Landscape Referral - MOD2017/0311 - 39 Boyle Street, Balgowlah	19/12/2017
 2017/530868	Plan - Notification	19/12/2017
 2017/534700	DA Acknowledgement Letter (not integrated) - Louise Diane Kuchel	21/12/2017
 2017/534755	Notification Letter - 11	21/12/2017
 2017/534945	Landscape Referral - MOD2017/0311 - 39 Boyle Street, Balgowlah	21/12/2017
 2018/163965	Heritage Referral Response - Mod2017/0311 - 39 Boyle Street	08/03/2018