

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0303
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 10 DP 2610, 3 Ogilvy Road CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA0203/2013 granted for alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Maxwell Stephen Polley Kim Cherie Polley
Applicant:	Boston Blyth Fleming Pty Ltd

Application lodged:	25/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/07/2019 to 16/07/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: No Clause 4.6 for modification applications. New works result in total variation of 3.5%
Recommendation:	Approval

EXECUTIVE SUMMARY

The applicant seeks to modify a development consent issued by the Land and Environment Court (Alterations and additions to the existing dwelling house). In particular it is proposed to alter the size of the decks on both the lower and ground floor of the dwelling house. The decks were conditioned under the previous modification application (MOD2018/482- Approved 6 March 2019) Condition No. 31C - Deck Amendments to be reduced in size. Roof alterations are also proposed to the development.

Following notification of the application Council received two (2) submissions from neighbouring properties raising concern with the application. Concerns raised included privacy, view loss, bulk and

scale, overshadowing, DCP non-compliance and impact to the natural environment. Each of these concern have been addressed in detail within this report.

Based on the detailed assessment contained in this report, it is recommended that the modification application be approved subject to conditions attached to this report.

The application is referred to the NBLPP as it seeks to modify a condition of consent originally imposed by the panel.

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

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 10 DP 2610 , 3 Ogilvy Road CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Ogilvy Road. The site is regular in shape with a frontage of 10.695m along Ogilvy Road and a depth of 44.195m. The site has a surveyed area of 472.6m².

The site is located within the E3 Environmental Management zone and accommodates a dwelling house.

The site slopes from the northern side down to the southern eastern corner of the site.

The site adjoins the E2 Environment Conversation Zone.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by multi storey dwelling houses.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA203/2013

Alterations and additions to an existing dwelling including first floor addition, rear extension with deck, garage extension, swimming pool and front fence with gates. (Approved by MIAP 15 May 2014)

Land and Environment Court Appeal- Case Number 14/10236

Appeal upheld pursuant to Section 34(3)(a) of the Land and Environment Court Act 1979 (23 July 2014).

DA203/2013- Part 2 (Section 96AA)

Alterations and additions to an existing dwelling including first floor addition, rear extension with deck, garage extension, swimming pool and front fence with gates. (Approved by DAU).

Proposed modification included:

- Amendment to RFS condition RFS12.
- Internal alterations.
- Additions
- External alteration.
- Deletion of swimming pool.

DA203/2013- Part 3 (Section S96(1))

Deletion of Conditions of consent Nos ANS02, ANS22, 16(2SP01), 17(2SP02), 18(2SP03), 19(2SP04) and 20(2SP05). (Approved NBLPP 25 July 2016).

MOD2018/0482 (Section 4.56)

Modification to the approved ground floor which includes extensions to the rear of the site, new lower ground floor deck, internal alterations, external alterations and removal of Condition ANS01. (Approved 6 March 2019).

Planners Comment: This application was approved by Northern Beaches Local Planning Panel on 6 March 2019. The Panel included a condition No. 31C which reduced the size and overall scale of the both the ground and lower ground floor decks.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent No. DA203/2013, Land and Environment Court S34 agreement and subsequent modification consents.

Modification sought include:

- Deletion of Condition 31C- Deck Amendments to enable the extension and alteration of the approved Lower Ground and Ground floor decks to the rear of the property.
- Roof Alterations.

The requested amendment involves deletion of Condition No. 31C - Deck amendments. The condition as imposed reads as follows:

31C Deck amendments

- (a) The proposed ground floor deck is to be amended to be setback from the eastern side boundary by 2.5m and to extend no further than 3.0m beyond the southern elevation wall towards the rear boundary.
- (b) The proposed roof extension on the ground floor deck shall be deleted.
- (c) The proposed lower ground floor deck is to be amended to align with the same side and rear boundary setback as the proposed ground floor deck as amended by (a).

Reason: To protect the amenity of adjoining neighbours and to provide an increased setback from the watercourse and to increase the landscaped open space.

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 DA203/2013, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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 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 DA203/2013 and subsequent modifications applications.
(b) 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 2013 and Manly Development Control Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA203/2013.

Section 4.56- Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.56 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 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 79C '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	None applicable.
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 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

Section 79C 'Matters for Consideration'	Comments
	of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. <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 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 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) 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 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 as part of the previous application MOD 2018/0482 (prepared by Matthew Willis, dated 12 August 2018). The report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions.

The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS were included as part conditions of consent of MOD2018/0482. No change is proposed under this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr David Cathcart Pike	1 Ogilvy Road CLONTARF NSW 2093
Mr Peter Alexander Groch Mrs Darine Groch	5 Ogilvy Road CLONTARF NSW 2093

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

- **Privacy (visual and acoustic).**
- **View Loss.**
- **Visual Bulk.**
- **Overshadowing.**
- **Impact to Natural Environment.**
- **DCP Numeric non-compliance**

The matters raised within the submissions are addressed as follows:

- **Privacy (visual and acoustic)**

Comment:

Concerns were raised about privacy impacts (acoustic and visual) from the lower ground and ground floor outdoor living areas. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP subject to maintaining a 2.5m setback (as currently conditioned) which minimises the loss of privacy by mitigating direct sightlines between outdoor living areas of the adjacent dwelling and the subject site without the need for privacy screening along the eastern side of the deck.

- **View Loss**

Comment:

Concern was raised in regards to view loss from private and public spaces to Middle Harbour. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *'Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140'* in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not

cause unreasonable view loss to and from public and private open spaces, subject to maintaining the 2.5m side setback requirement to decks from the eastern boundary, to address the general outlook and amenity of 1 Ogilvy Road.

- **Visual Bulk**

Comment:

Concern was raised that proposed development will have an adverse visual impact as viewed from the foreshore.

The visual impact of the dwelling house is consistent with that of other dwelling houses in the street and surrounding Sydney Harbour catchment area. The proposed bulk and scale of the house will not be offensive when viewed from the public domain.

- **Overshadowing**

Comment:

Concern is raised that the proposed development will result in unreasonable overshadowing of the adjoining properties and public open space. In summary, the development allows for a reasonable level of sunlight to be maintained to adjoining properties between 9am and 3pm on June 21 and public open space, consistent with the numeric control under the Manly DCP.

- **Impact to Natural Environment**

Comment:

Concern is raised by both objecting parties in regards to the impact upon the natural environment, particularly that of the Biodiversity and the Watercourse running through the rear of the subject site. The application was referred off the both Council's coast and catchment officer and bushland and biodiversity officer, who raised no concern in regards to the proposed modifications. Conditions imposed as part of the most recent modification application (MOD2018/0482) still apply.

- **DCP Non-compliance**

Comment:

General concern was raised in regards to the numeric non-compliance with Manly DCP controls. Each aspect of non-compliance has been addressed throughout the report. In summary, the development as a whole is seen to be consistent with the underlying objective contained within the Manly DCP as well as the Manly LEP and relevant SEPP's.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification has been assessed against the objectives of Manly LEP Clause 6.5 (Terrestrial Biodiversity). The modification is unlikely to result in substantial additional impact to native vegetation and is therefore considered to comply with the control.
NECC (Coast and Catchments)	There are no additional comments or changes from the previous comments provided under MOD2018/0482.

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	Please refer to the Coast and Catchments referral for comment on Riparian conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	As all changes are above the 1% AEP Flood Level, it is satisfactory for flood safety, provided it complies with the existing 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.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.

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 19 - Bushland in Urban Areas

The provisions of the SEPP require that a person shall not disturb bushland zoned or reserved for public open space purposes without the consent authority considering the aims and objectives of the SEPP.

In this regard, consideration is given as follows:

(1) The general aim of this Policy is to protect and preserve bushland within the urban areas referred to in Schedule 1 because of:

- (a) its value to the community as part of the natural heritage,
- (b) its aesthetic value, and
- (c) its value as a recreational, educational and scientific resource.

Comment:

The subject property adjoins bushland zones land therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2 (aims of the SREP), Clause 6 (relating to consent to disturb bushland zones or reserved for public open space), Clause 8 (Plans of management), Clause 9 (Land adjoining land zoned or reserved for public open space) (see below). The proposal is consistent with the above provisions of the SEPP, subject to conditions.

An assessment against Clause 9 (Land adjoining land zoned or reserved for public open space) is provided of this policy is provided below:

(1) This clause applies to land which adjoins bushland zoned or reserved for public open space purposes.

(2) Where a public authority:

(a) proposes to carry out development on land to which this clause applies, or

(b) proposes to grant approval or development consent in relation to development on land to which this clause applies,

Comment:

Works are proposed on land that adjoins the urban bushland zone.

the public authority shall not carry out that development or grant the approval or development consent unless it has taken into account:

(c) the need to retain any bushland on the land,

Comment:

The proposed retains appropriate amounts of vegetation within the subject site and the adjoining bush land to the rear, subject to existing conditions of consent.

(d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and

Comment:

The proposed development will not have detrimental impact on the above.

(e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

Comment:

Council's biodiversity and sustainability officers have previously imposed conditions of consent to address the the protection and preservation of bush land.

Based on the above, it is considered that the development is consistent with this policy.

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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
 - (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*

- (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

The proposal will not cause an adverse impacts on the relevant matters described above in subclause (1).

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

The proposal is unlikely to result in any significant impact upon coastal amenity. The resulting impact is

deemed to be negligible. The proposal will not compromise access to any beach, foreshore or rock platform adjacent to the development.

The application was referred off to Council's floodplain and storm water management officer, natural environment officer as well as coast and catchment officer. The referrals raised no issues to the subject development, subject to conditions of consent.

Suitable conditions of consent have been included as part of the consent to ensure there are coastal processes and current and future coastal hazard are retained and mitigated appropriately.

13 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:

The proposal is considered to have minimal or no impact in any of these areas listed above..

- (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 subclause (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 proposal is considered to have minimal or no impact in any of these areas.

14 Development on land within the coastal use area

- (1)
- (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 platform*

- for members of the public, including persons with a disability,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) 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:

The proposed dwelling house will not adversely impact upon the following:

- Existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands,
- Aboriginal cultural heritage, practices and places,
- cultural and built environment heritage, and

The bulk and scale of the development will not compromise the coast.

15 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 proposed works are considered to have a negligible impact on the surrounding environment and are unlikely to cause an increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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	9.8m	8.8m (roof alterations)	3.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

4.6 Exceptions to development standards

In accordance with the Land and Environment Court caselaw of *North Sydney Council v Michael Standley & Associates Pty Ltd* [1009] NSW 163 (Michael Standley & Associates) the Court determined that Section 96 (now Section 4.55) is a "free-standing provision" meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application." This means that Clause 4.6 of the MLEP 2013 does not strictly apply to the assessment of a modification application.

Notwithstanding the findings in *Michael Standley & Associates*, the Court later detailed in *Gann v Sutherland Shire Council (2008)* that consideration should still be given to the relevant standard objectives:

"This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply."

Accordingly, with consideration to the above caselaw, a merit assessment of the variation sought against the approved development is undertaken below to identify the developments consistency with the zone objectives and prevailing development standard objectives.

Requirement:	8.5m
Proposed:	8.8m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical

If numerical enter a % variation to requirement	3.5%
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The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

(1) The objectives of this Clause 4.3 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 proposed building height of the development is reasonable given the fall of land, the existing building and the height of other dwelling houses within the street. The works will not be readily visible from Ogilvy Road. The impact upon the streetscape will be negligible.

The development satisfies this objective.

b) to control the bulk and scale of buildings,

Comment:

The resulting bulk and scale of the building is not unreasonable. The application proposes a roof alterations over the existing ground floor. The works are solely concentrated to the rear of the property and will maintain the amenity of the existing dwelling house and adjoining properties.

The development satisfies this objective.

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 proposed development does not cause unreasonable view loss to and from public and private open spaces.

The development satisfies this objective.

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 solar impacts of this aspect of the development are minimal and acceptable in terms of the

impacts on habitable rooms of the adjoining properties and public open spaces.

The development satisfies this objective.

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

Comment:

The proposed development has regards to the existing vegetation and topography of the site and surrounding development. The works are not going to have any unreasonable impact on urban bushland or surrounding land uses.

The development satisfies this objective.

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

What are the underlying objectives of the zone?

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

The underlying objectives of the E3 Environmental Management zone

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

Comment:

The proposed development is acceptable in terms of its impacts on the ecological and aesthetic values. There are no known special ecological, scientific or aesthetic sites of value recorded on the subject site.

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

Comment:

The proposed works would not have an adverse effect on those values.

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

Comment:

The proposed works would have an unreasonable impact on tree canopies. The subject site is not in close vicinity of any important trees. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore. The proposed built form, as amended will

fit comfortably within its surrounds.

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

Comment:

The proposed works are located near the foreshore however by design and as conditioned will have no impact on natural features. The generous setback proposed between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the harbour.

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

Comment:

The proposal is not considered to have any negative impacts on the foreshore, subject to conditions.

- *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 height and bulk of the proposed building has had regard to the adjoining development and the existing landscaping and topography of the adjoining sites.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

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

Comment:

The development seeks a minor increase the 8.5m height control to a provide a more equitable use of the outdoor living areas through roof alterations. The proposal does increase the yield of the development and has a minor impact upon surrounding lands. It is found that the development as proposed achieves a better outcome than that of the approved development.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 472.6m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	East: 8m (based on gradient 1:4)	9m	7.1m (measured to top of ground floor balustrade)	Yes
	West: 8m (based on gradient 1:4)	7.5m	6.5m (measured to top of ground floor privacy screen)	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.5m	0.4m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.36m (based on eastern wall height)	2.5m-(As conditioned by previous panel determination)	0.9m	No
	2.16m (based on eastern wall height)	0.9m	0.9m	No
	Secondary street frontage: Prevailing setback	8.4m- 10.4m (As conditioned)	7.995m- 10.8m	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	6.5- 8.9m (As conditioned)	7.995m- 10.8m	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (283.56m ²) of site area	52.9% (250.1m ²) (As conditioned)	48.66% (230.1m ²)	No
	Open space above ground 25% (57.53m ²) of total open space	(15.6%) 39.2m ² (As conditioned)	25.7% (59.2m ²)	
4.1.5.2 Landscaped Area	Landscaped area 40% (89.6m ²) of open space	43.9% (109.9m ²) (As conditioned)	40% (89.9m ²)	Yes

Note: The built form controls reflect the conditioned amendments made by the Northern Beaches Local Planning Panel under MOD2018/0482.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed modification application increases the overall scale of the decks on both the lower floor and ground floor to the rear and eastern side of the property.

The proposed lower floor deck is setback from the rear boundary 8.3m at the western edge increasing to a 10.796m setback along the eastern edge of the deck. The ground floor deck is setback 7.995m from the rear boundary at the western edge increasing to a 10.865m rear setback at the eastern edge. Both decks are setback at least 0.9m from eastern and western side boundaries. Privacy screens are proposed along the western side of both the lower ground and ground floor deck. The proposed decks have a minimum setback of 0.9m from both the western and eastern boundary.

No. 5 Ogilvy Road, Clontarf

It is noted that the adjoining dwelling house to the west of the subject site (No. 5 Ogilvy Avenue) has

existing decking on both the lower ground floor and ground floor deck of a similar bulk and scale to what is proposed on the subject site.

It is evident that there are some sight lines onto both decks of the adjoining property to the west. However, the sightlines are not the dominant views (which is directly to the rear of the subject site) and inevitable given the residential use of the area. The proposed decking is suitably setback from the rear boundary, to ensure there are no direct sightlines to the adjoining properties. The size and locations of the decks in conjunction with the proposed privacy screening will ensure that the development does not result in unreasonable visual or acoustic privacy impacts on the neighbouring property to the west.

No. 1 Ogilvy Road, Clontarf

The proposed deck amendments will decrease the conditioned setback along the eastern side of the deck from a 2.5m side setback to 0.9m east side setback for both the ground and lower floor decks with no screening along the eastern elevation. The reduced setback which is non-compliant with the numeric control, will result in increased sight lines to the rear yard of No. 1 Ogilvy Road. Maintaining a 2.5m setback (as currently conditioned) minimises the loss of privacy by mitigating direct sightlines between outdoor living areas of the adjacent dwelling and the subject site without the need for privacy screening along the eastern side of the deck.

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

Comment:

The 2.5m east side setback was specifically conditioned as part of the previous modification application (MOD2018/0482) to allow for a greater outlook from the rear yard of No. 1 Ogilvy Road to bushland and the harbour.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal retains an open frontage to allow for passive surveillance of the street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The proposed development will result in a negligible loss of views from the adjoining eastern property

(No. 1 Ogilvy Road, Clontarf) to Middle Harbour. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

The proposal results in a disruption of views from neighbouring properties. The level of view loss is not unreasonable and has been assessed below with regards to the planning principle established by the NSW Land and Environment Court.

Council received one (1) submission from a neighbouring property in relation to view loss as part of this modification application. The Manly DCP refers to the planning principle within *Tenacity Consulting v Waringah [2004] NSWLEC 140* when considering the impacts on the views of the adjoining properties. This is provided below:

1. Nature of the view affected.

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

Comment:

No. 1 Ogilvy Road, Clontarf

The nature of the views affected from this property would be beach and harbour (water) views to the south-west. The views would be filtered through existing development and vegetation shown below. a large portion of the existing views are side and over the top of existing development and vegetation.



Photo 1- Ground floor terrace (standing)



Photo 2- Ground floor terrace (sitting)



Photo 3- Ground floor living room (standing)



Photo 4- Ground floor living room (sitting)



Photo 5- Lower ground floor terrace (standing)



Photo 6- Landscaped open space (standing)

2. What part of the affected property are the views obtained.

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

Comment:

No. 1 Ogilvy Road, Clontarf

The views affected from this property are obtained over the rear and side boundary. The views are over the top of the existing development and urban bushland. Views are obtained from a standing and sitting positions from living room and private open space, filtered through

vegetation of urban bushland.

3. Extent of Impact

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

Comment:

No. 1 Ogilvy Road, Clontarf

No. 1 Ogilvy Road, currently has significant water views to the south and south-east. Views are enjoyed from the ground floor living room and adjoining terrace, the lower ground floor terrace and private open space to the rear of the site. Water views from the ground floor living room and terrace would be

impacted removal of the eastern privacy screens.

4. Reasonableness of the proposal causing the impact

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

Comment:

The proposal is inconsistent with the building height development standard under the Manly LEP. However, it is considered that a compliant proposal in this regards would not substantially improve access to harbour views.

The proposal responds appropriately to the available views through the provisions of views corridors over the top and to the rear of the subject property through building articulation and setback to ensure highly valued water views are retained to a satisfactory extent from adjoining properties (No. 1 Ogilvy Road, Clontarf) from principle private open space. This proposed reduction of the deck on the eastern side of development and removal of the privacy screens along the eastern side of the deck proposed under the former modification application (MOD2018/0482), will ensure a greater views corridor is opened from the landscaped open space to the rear of the property. The overall impact on No. 1 Ogilvy Road, Clontarf in terms of view loss is negligible to minor.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved.

In regards to public open space, particularly that of the unmade road that is adjacent to subject site, the loss of views is negligible.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved from public open space

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposed works will not cause unreasonable loss of views. In regards to 'view creep' the proposal or neighbouring properties does include unreasonable bulk which could result in unreasonable future view loss.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

This clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal

against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.36m from the eastern boundary and 2.16m from the western boundary.

Clause 4.1.4.6 of the Manly DCP requires development adjacent from LEP Zoned E2 be setback 8m from the rear boundary.

The development proposes the following:

East side setback- 0.9m (61.9% variation to the numeric control)

West side setback- 0.9m (58% variation to the numeric control)

Rear setback- 7.995m- 10.8m (0.06% variation to the numeric control)

Merit consideration:

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

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

Comment:

The proposed works will not readily visible from Ogilvy Road. Existing landscape features that adjoin the subject site on the Council reserve and urban bush land will be retained throughout the life of the development.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

Amenity considerations including privacy, solar access and maintenance of views are all suitably managed and retained as part of these modifications.

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

Comment:

Flexibility if provided in this circumstance as the proposed decks will not cause any unreasonable amenity impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

Important landscape features on site and immediately adjoining the subject site are to be retained. The provisions of *State Environmental Planning Policy No 19 - Urban Bushland* are satisfied, this is addressed elsewhere within this report.

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

Comment:

Suitable access to the adjoining bush land area is retained from the street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 60% (283.56m²) of the site area be total open space. The proposed total open is 48.66% (230.1m²), non-compliant with the numeric control.

Clause 4.1.5.2 of the Manly DCP requires total open space above ground be no more than 25% of total open space. The proposed total open space above ground is equal to 25.7% (59.2m²), non-compliant with the numeric control.

Merit consideration:

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

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

Comment:

Existing vegetation features to the rear of the site will be retained as part of this proposal.

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

Comment:

Substantial landscaping is retained on site at ground level, consistent with the numeric control. No trees on the subject site or surrounding private and public space are proposed to be removed.

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

Comment:

Amenity considerations including privacy and views are retained as part of these works to a reasonable extent. The works will not be readily visible from the street.

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

Comment:

The proposal retains reasonable levels of landscaped open space at ground level to the front and rear of the dwelling to minimise the stormwater runoff.

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

Comment:

The proposed works will not lead to an unreasonable spread of weeds across the site, adjoining properties or public open spaces including the foreshore and urban bush land to the rear of the property.

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

Comment:

The application was referred to Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts. The development was recommended for approval, subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Northern Beaches Section 7.12 Contributions Plan 2019

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 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. Mod2019/0303 for Modification of Development Consent DA0203/2013 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 10 DP 2610,3 Ogilvy Road, CLONTARF, 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
Dwg No. 1/ Site and Site Analysis/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 2/ Lower Floor Plan/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 3/ Ground Floor Plan/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 4/ Garage and Upper Floor Plan/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 5/ Elevations S & E/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 6/ Elevations N & W/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 7/ Section/ Revision K	12 April 2019	Gartner Trovato

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

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

B. Delete Condition 31C- Deck amendments - to read as follows:

Condition 31C- Deck amendments
DELETED

C. Add Condition 31D- Deck Setbacks - to read as follows:

The proposed lower and upper deck are to be amended to be setback from the eastern side boundary 2.5m. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any construction certificate.

Reason: To protect the amenity of neighbouring properties.

D. Add Condition 31E- Boundary Survey - to read as follows:

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property, easement boundaries and rights of carriageway. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any construction certificate.

Reason: To ensure the accurate location of buildings in relation to boundaries, easements and rights of way.