

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0287
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 40 DP 8075, 7 Bower Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/0921 granted for Demolition works and construction of a dwelling house including a swimming pool.
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Trustees of the Roman Catholic Church Jurgen Spangl Karin Mundspurger
Applicant:	Jurgen Spangl Karin Mundspurger

Application Lodged:	20/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	28/06/2022 to 12/07/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent DA2020/0921.

The modifications proposed include:

- Plant Room and Rainwater Tank repositioned;

- North-eastern garage wall openings reduced to 3 smaller openings;
- Structural reconciliation amendments including amalgamating 2 single openings on the south-western garage wall, and additional foundation wall; structure and columns under the Living Room;
- Entry gate design refined to include a side panel for intercom, light, and house number;
- Concrete flooring replaced with natural pavers;
- Design refinement to balustrades and pool barriers including glass balustrade behind spiral staircase for fall prevention;
- Home Office layout slightly reconfigured;
- Internal alterations;
- Minor external alterations; and
- Landscaping alterations;

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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

SITE DESCRIPTION

Property Description:	Lot 40 DP 8075 , 7 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Bower Street.</p> <p>The site is regular in shape with a frontage of 15.2m along Bower Street and a depth of 45.7sqm. The site has a surveyed area of 696.8m².</p> <p>The site is located within the R1 Residential zone from</p>

Manly LEP 2013 and accommodates detached two storey brick dwelling with tiled pitched roof. The existing driveway to the site traverses Council land / the road reserve. Parking is available for two cars to the front of the dwelling.

The site has a fall of approximately 6.5m from the rear boundary towards the front of the allotment. The rear yard is bound by a stonewall and a number of small trees and rock outcrops. The front yard is turfed with an assortment of small to large trees. Stone garden beds line the driveway. The site is included in Map D requiring a 7 part test under Section 5A of the Environmental Planning and Assessment Act, 1979 in relation to long nosed bandicoots

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by large two and three storey dwellings. North Head National Park is located to the rear of the site (the immediate north), Shelly Beach and the Headland Walk is located to the east and south-east and St Patrick's Estate is located to the west.

Map:



SITE HISTORY

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

DA2020/0921 - Demolition works and construction of a dwelling house including a swimming pool (Approved 25 September 2020)

Pre-lodgement Meeting PLM2020/0099 was held on 04/06/2020 for Demolition Works and construction

of a dwelling house including a swimming pool. The pre-lodgement notes summaries that the proposal is generally acceptable subject to consideration of the reduction of the height to fully comply with the 8.5m height limit and the submission of sufficient information to justify any non-compliance. The subject application is generally consistent with the plans lodged at the PLM.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0921, 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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The amendments are minor and do not introduce a substantially greater environmental impact.</p>
(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	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0921 for the following reasons:</p> <ul style="list-style-type: none"> • The approved use of the site will remain unchanged. • From both a qualitative and quantitative perspective (which includes (but is not limited to) building height, setbacks, landscaped area, etc.) the proposed modifications will not

Section 4.55(1A) - Other Modifications	Comments
	<p>substantially alter the development from what was previously approved.</p> <ul style="list-style-type: none"> The proposal will have no additional impact on surrounding sites nor the public domain. <p>The development, as proposed, has been found to be such that Council is not satisfied that the proposed works are substantially the same as those already approved under DA2020/0921.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>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.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

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	Warringah 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	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires

Section 4.15 'Matters for Consideration'	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><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.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to biodiversity.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><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. .</p> <p><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.</p>
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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
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 'Matters for Consideration'	Comments
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 revised Bush Fire Report was submitted with the application stating that the development still conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/06/2022 to 12/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>Updated Biodiversity Referral (23 September 2022)</p> <p>This updated referral is based on the ecological report (GIS Environmental Consultants, 15 September 2022) provided as additional information. The report states:</p> <p><i>"It is considered that the Modification Application would not impact access to important potential foraging or sheltering habitat and does not further reduce potential foraging or sheltering habitat for the endangered North Head population of the Long-nosed Bandicoot at the subject address. It is considered that the Modification Application would not further impact or restrict access to significant potential Bandicoot foraging or sheltering habitat, and would not impede any access-way between the adjoining Sydney Harbour National Park and potential foraging habitat elsewhere within the declared endangered population area."</i></p> <p>Based on this advice, there are no further objections to the proposed modification, subject to retention of existing biodiversity conditions</p>

Internal Referral Body	Comments					
	<p>for DA2020/0921 which are: Conditions 11, 12, 13, 14, 14, 19, 26, 27, 34, 35, 36, 37, 38.</p> <p>Original Biodiversity Referral (5 July 2022) There is insufficient information to complete the biodiversity assessment at this time. The modification application proposes a number of changes to landscaping which may impact access to important habitat and reduce habitat for the endangered population of Long-nosed Bandicoots. Given the previous importance of the subject site for bandicoot foraging habitat, and as an accessway between the adjoining National Park and foraging habitat elsewhere within the declared population area, it is considered appropriate that the proposed modification be subject to ecologist's review.</p> <p>An updated ecological impact statement/report, confirming any potential additional impacts arising from the modification, is required to be submitted before assessment can be finalised. The ecological statement/report must be prepared by a suitably qualified ecological consultant, and must consider bandicoot habitat both within and adjoining the development area, including Lot 2 at the rear of the site.</p>					
NECC (Development Engineering)	Development Engineering has no objection to the application.					
Strategic and Place Planning (Heritage Officer)	<table border="1"> <thead> <tr> <th data-bbox="520 1106 1439 1144">HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="520 1144 1439 1182">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="520 1182 1439 1361"> <p>This modification application has been referred to Heritage as the property adjoins a State heritage item, being Item I131 - St Patrick's Estate - 151 Darley Road, Manly, which is listed in Schedule 5 of Manly Local Environmental Plan 2013.</p> </td> </tr> <tr> <td data-bbox="520 1361 1439 1400">Details of heritage items affected</td> </tr> <tr> <td data-bbox="520 1400 1439 2139"> <p>Details of the item as contained within the state inventory is as follows: Item I131 - St Patrick's Estate - 151 Darley Road, Manly <u>Statement of significance</u> St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The 1885-1935 buildings and grounds of the estate make up one of Australia's most outstanding collegiate ensembles unrivalled for its completeness, grandeur and extraordinary siting. A monument to the establishment of Catholicism and the Catholic priesthood in Australia, St Patrick's Estate represents Australia's first national Catholic ecclesiastical seminary, the largest in the southern hemisphere at the time of its construction, the official national residence for the Archbishop for nearly a century, one of Australia's most extensive ecclesiastical estates and one of the oldest land grants to the Catholic Church. The College and the Archbishop's Residence have historical significance as important physical manifestations of Cardinal Moran's concepts and plans for</p> </td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>This modification application has been referred to Heritage as the property adjoins a State heritage item, being Item I131 - St Patrick's Estate - 151 Darley Road, Manly, which is listed in Schedule 5 of Manly Local Environmental Plan 2013.</p>	Details of heritage items affected	<p>Details of the item as contained within the state inventory is as follows: Item I131 - St Patrick's Estate - 151 Darley Road, Manly <u>Statement of significance</u> St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The 1885-1935 buildings and grounds of the estate make up one of Australia's most outstanding collegiate ensembles unrivalled for its completeness, grandeur and extraordinary siting. A monument to the establishment of Catholicism and the Catholic priesthood in Australia, St Patrick's Estate represents Australia's first national Catholic ecclesiastical seminary, the largest in the southern hemisphere at the time of its construction, the official national residence for the Archbishop for nearly a century, one of Australia's most extensive ecclesiastical estates and one of the oldest land grants to the Catholic Church. The College and the Archbishop's Residence have historical significance as important physical manifestations of Cardinal Moran's concepts and plans for</p>
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Internal Referral Body	Comments		
	<p>the development of Catholicism in Australasia. The buildings have historical significance also for their associations people involved in the development of the College and Australia's priesthood.</p> <p><u>Physical description</u> The physical description for the site includes discussion on a number of individual buildings of the estate. Of note for this proposal is the sandstone wall that is on Lot 2, DP 1109497 that is behind the subject property.</p>		
	<p>Other relevant heritage listings</p>		
	<p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p>	<p>No</p>	<p>Comment if applicable</p>
	<p>Australian Heritage Register</p>	<p>No</p>	
	<p>NSW State Heritage Register</p>	<p>Yes</p>	<p>St Patrick's Estate is on the State register</p>
	<p>National Trust of Aust (NSW) Register</p>	<p>Yes</p>	<p>St Patrick's Estate is on the National Trust register</p>
	<p>RAIA Register of 20th Century Buildings of Significance</p>	<p>No</p>	
	<p>Other</p>	<p>N/A</p>	
	<p>Consideration of Application</p>		
	<p>This application proposes various modifications to DA Consent No. 2020/0921, which approved the construction of a new dwelling on the site. All proposed changes are contained within the main lot, being Lot 40 DP8075, with no additional works proposed on the land to the rear (part of Lot 2 DP1109297). The State heritage listed stone boundary wall is located at the rear of part Lot 2 DP 110929, which sits behind the development site. As no works are proposed on this land and all modifications are minor adjustments to the already approved new dwelling, there will be no impact on the adjoining heritage item.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>		
	<p>Further Comments</p>		
	<p>COMPLETED BY: Janine Formica, Heritage Planner DATE: 19 July 2022</p>		

Internal Referral Body	Comments

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1113608S_05) dated 7 April 2022.

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	99

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

- b) coastal environmental values and natural coastal processes,
- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposal will not have unreasonable impacts on the ecology, native vegetation and fauna subject to existing conditions recommended by Council's Bushland and Biodiversity Unit and Landscape Officer. The proposal will not restrict access to public open space or safe access to the foreshore, beach or headland.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed development does not result in a further impact to the processes of the coastal waterway, public foreshore access, Aboriginal heritage or native vegetation than what has been previously established by the existing dwelling.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to
 - iii) foreshores,
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:

- i) the development is designed, sited and will be managed to avoid an adverse
 - ii) impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is consistent with the character, bulk and scale of the locality and the proposed dwelling is smaller in scale to those directly adjoining the site.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal will not increase the risk of coastal hazard.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

Relevant coastal management programs have been considered as part of this application. The proposed application will not impact any unreasonable impact on the coast.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.86m	7.2m	-	Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.33:1	No change	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 696.8sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North-east: Home office 7.3m based on a gradient slope of 1:8 *The dwelling is setback 7.9m from the north-east boundary. The frame of the canopy / spiral staircase are setback 2.1m	5.8m - 6.7m	6.7m	Yes
	South-West: 7.3m based on a gradient slope of 1:8	Between 5.5m and 8m	3.4m	Yes
4.1.2.2 Number of Storeys	2/3	2/3	No change	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.2m	N/A	Yes
	Pitch: maximum 35 degrees	7 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	12.26m	-	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	East: ground 1.13m	home office - 1.461m	1.461m	Yes
	Windows: 3m	1m - 1.45m	1.02m	No
4.1.4.4 Rear Setbacks	8m	9m	-	Yes
4.1.5.2 Landscaped Area	3 native trees	3 trees	No change	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.2m	No change	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	The pool in an in-ground pool	No change	Yes
	1m curtilage/1.5m water side/rear setback	3.5m	No change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No change	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 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
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
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Description of non-compliance

Clause 4.1.4.2 also requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposed window alterations along the western elevation are setback 1.02m from the side property boundary, non-compliant with the numeric control.

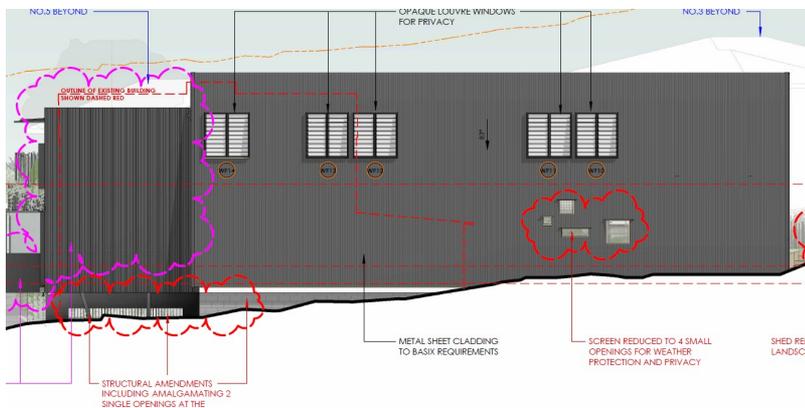


Image 1 - Window alterations shown in highlighted in red.

Comment

The proposal has been assessed against the objectives of the setback control as discussed below:

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 modification is consistent with the spatial proportions of the street and the street edge. As such, the proposed development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side and front setbacks. The proposed window alterations are located on the approved southern wall. The window alterations are consistent with the streetscape, subject to heritage conditions

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

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will not lead to any loss of significant view. There is no significant impact on the streetscape, subject to conditions.

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

Comment

Flexibility is provided in this circumstance as the proposed dwelling house will not result in any unreasonable impacts upon adjoining properties.

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

Sufficient deep soil planting is provided throughout the site including adequate space for bandicoot movement. Councils Landscape Officer raised no objection to the original proposal.

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

Comment

The Bushfire report notes that the site is to be managed as an Asset Protection Zone (APZ). The planting has been designed to be consistent with the requirements of the APZ namely low ground cover and bushfire resistant species.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0287 for Modification of Development Consent DA2020/0921 granted for Demolition works and construction of a dwelling house including a swimming pool. on land at Lot 40 DP 8075,7 Bower Street, MANLY, 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) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 002/ Rev 2 Proposed Site Plan	4 April 2022	CplusC Architectural Workshop
DA 003/ Rev 2 Proposed Garage Floor	4 April 2022	CplusC Architectural Workshop
DA 004/ Rev 2 Proposed Ground Floor	4 April 2022	CplusC Architectural Workshop
DA 005/ Rev 2 Proposed First Floor	4 April 2022	CplusC Architectural Workshop
DA 006/ Rev 2 Proposed Roof Plan	4 April 2022	CplusC Architectural Workshop
DA 007/ Rev 2 Elevation North-West	4 April 2022	CplusC Architectural Workshop
DA 008/ Rev 2 Elevation North-East	4 April 2022	CplusC Architectural Workshop
DA 009/ Rev 2 Elevation South-East	4 April 2022	CplusC Architectural Workshop
DA 010/ Rev 2 Elevation South-West	4 April 2022	CplusC Architectural Workshop
DA 011/ Rev 2 Section A Main House	4 April 2022	CplusC Architectural Workshop
DA 012/ Rev 2 Section B - Pool, Home Office and Garage	4 April 2022	CplusC Architectural Workshop
DA 013/ Rev 2 Section C - Garage and Living	4 April 2022	CplusC Architectural Workshop

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Report Ref 2888	23 July 2020	Bushfire Planning and Design (BPAD)
Terrestrial Biodiversity Report and Threatened Species Assessment for Long Nosed Bandicoots	15 September 2022	ASC Environmental Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By

J0819-DA01 Concept Landscape Plan - Site Plan and Statement of Landscape Intent	29 March 2022	Duncan Gibbs
J0819-DA03 Concept Garden Design - Front Garden	29 March 2022	Duncan Gibbs
J0819-DA04 Concept Landscape Plan - Rear Garden and Detail Isometric Views	30 March 2022	Duncan Gibbs

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

B. Add Condition No.16A - Unauthorised works - to read as follows:

No approval is given for the 'Openings reduced for concealing services' as detailed on the eastern elevation on the architectural plans.

Reason: Council cannot provide retrospective consent under a development application.

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

Signed



Maxwell Duncan, Planner

The application is determined on 30/09/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments