

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0658
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 130 DP 11162, 15 Alto Avenue SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2020/0237 granted for the construction of a Dwelling House
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Shannon Elizabeth Deeran
Applicant:	Vaughan Patrick Milligan

Application Lodged:	31/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify the conditions of development consent DA200/0237. There are no works proposed as part of this application.

The subject site currently has three (3) approved Development Applications that formed a part of a three (3) stage development. The stages are as follows:

- DA2020/0237 - for the construction of a dwelling house
- DA2020/0238 - for the demolition of a dwelling house and associated structures
- DA2020/0236 - for the subdivision of one lot into two Lots

As stated in Condition 1 of all three development consents, the final outcome of the three stages is a two-lot subdivision, with a dwelling house on Lot 1 and a vacant site on Lot 2. Whilst, the applicant requested the proposal be staged into three (3) separate stages, it is in effect one development.

Modification

The modification seeks to delete condition No.33 and No.35 from the Notice of Determination of DA2020/0237.

The conditions read as follows:

Condition 33 - Subdivision Stage 3 (DA2020/0236)

The subject land Lot 130 of DP 378463 shall be subdivided as per the Stage 3 approval DA2020/0236.

Evidence of the approved Subdivision Certificate Application, as per Stage 3 (DA2020/0236) shall be provided to the Principle principal Certifying Authority prior to the issue of a Final occupational certificate.

Reason: To ensure all three (3) stages of the proposal are complete.

Condition 35 - Demolition Works - Stage 2 (DA2020/0238)

All existing buildings as part of the demolitions works for Stage 2 (DA2020/0238) shall be demolished.

Evidence of the demolition of the buildings, as approved in Stage 2 (DA2020/0238) shall be provided to the Principle principal Certifying Authority prior to the issue of a Final occupational certificate.

Reason: To ensure all works are complete prior to the subdivision of the land.

Condition Correction

An error was identified in Condition No. 1 of DA2020/0237.

Condition No. 1 incorrectly listed the three approved development consents as DA2020/0036, DA2020/0037 & DA2020/0038. The consent numbers should of been correctly identified as DA2020/0236, DA2020/0237 & DA2020/0238.

Whilst the Modification does not seek to amended Condition No. 1, the correction of the error will also be undertaken to ensure the accurate consent numbers are listed within the condition.

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 - 3.7 Stormwater Management

Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision

SITE DESCRIPTION

Property Description:	Lot 130 DP 11162 , 15 Alto Avenue SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site is legally identified as Lot 130 within Deposited Plan 11162 and is known as 15 Alto Avenue Seaforth. The site is located within the R2 Low Density Residential zone as mapped within the Manly Local Environment Plan 2013.</p> <p>The subject site is located on the eastern side of Alto Avenue and the western side of Prince Edward Road. As a result the subject site has two street frontages.</p> <p>The site is irregular in shape with a surveyed area of 1037m². The frontage along Alto Avenue measures 15.24m and the frontage along Prince Edwards Road measures 19.24m. The northern and southern side boundaries have an average depth of 68.5m.</p> <p>The site slopes from the south to north and includes a crossfall of approximately 1.3m. The site is burdened by a Council stormwater pipeline which traverses through the western portion of the subject site, closest to the Alto Avenue street frontage.</p> <p>The site is currently has a newly constructed dwelling house, and additional dwelling house that is to be demolished as part of the (3) stage development two lot subdivision with a dwelling house on Lot 1 and a vacant site on Lot 2.</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses, of varying ages, within a landscaped setting.</p>

Map:



SITE HISTORY

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

The three (3) application below forms a part of a stage development of three (3) stages. The final outcome of the development is a two lot subdivision, with a dwelling house on Lot 1 and a vacant site on Lot 2. Whilst the applicant requested the proposal be staged into three (3) separate stages, it is in effect one development.

- Development Application **DA2020/0237** for the construction of a Dwelling House was approved by Council on the 22/05/2020.
- Development Application **DA2020/0238** for the demolition of a Dwelling House and associated structures was approved by Council on the 22/05/2020.
- Development Application **DA2020/0236** for the subdivision of one lot into two was approved on the 22/05/2020.
- Application **CDC2020/0345** for Constructions of a Swimming Pool was received by Council on the 28/05/2020.
- Application **Mod2021/0484** for the modification of a Swimming Pool by removing decking and replacing with grass was received by Council.
- Development Application **DA2019/0344** for the subdivision of one (1) Lot into two (2) Lots and associated infrastructure was refused by Council on the 3 August 2009.
- Pre-Lodgement meeting **PLM2018/0091** was held on the 22 May 2019. The proposal presented at the meeting consisted of the demolition of the structures on the site, the subdivision of one (1) Lot into two (2) Lots and the construction of a dwelling house.

- Pre-Lodgement meeting **PLM2018/0091** was held on the 22 May 2019. The proposal presented at the meeting consisted of the demolition of the structures on the site, the subdivision of one (1) Lot into two (2) Lots and the construction of a dwelling house.

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 DA2020/0237, 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 proposed changes maintain the approved use and do not alter the intent of the lot to be developed.</p> <p>The approved bulk and scale of the new dwelling remains consistent with the consent as approved. There is no change to the building height, or any design revisions the structures as. The dwelling house will maintain the originally approved physical appearance consistent with the original approval.</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	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 DA2020/0237.

Section 4.55(1A) - Other Modifications	Comments
as originally granted was modified (if at all), and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly 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	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development

Section 4.15 'Matters for Consideration'	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters have been addressed via a condition in the original consent.</p> <p><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 documentation was submitted with the original application/This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><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.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><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.</p> <p><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.</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 Manly 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 (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 'Matters for Consideration'	Comments
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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

REFERRALS

No referrals were sent in relation to this application

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)

Nil

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

The proposal seeks to amend specific conditions of consent. As a result, there is no change to the Principal Development Standards.

Manly Development Control Plan

Built Form Controls

The proposal seeks to amend specific conditions of consent. As a result, there is no change to the Built Form Controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	Yes

Detailed Assessment

3.7 Stormwater Management

The Development Engineers applied conditions of consent requiring bonds to be paid to Council to ensure the rectification of any damage to Council infrastructure, including stormwater drainage during construction.

The conditions as follows:

5. Security Bonds

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

6. Construction, Excavation and Associated Works Bond (Drainage works)

The applicant is to lodge a bond of \$ 10000 as security against any damage to the stormwater drainage as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

After consultation with Councils Development Engineer, it was agreed that the bonds under conditions No. 5 and No. 6 can be released as the all stormwater works and construction works have been completed, and post dilapidation reports for Councils infrastructure were approved by Council on the 8 August 2021.

4.1.1 Dwelling Density, Dwelling Size and Subdivision

The modification seeks to remove condition No.33 and No.35 from the Notice of Determination of DA2020/0237.

The removal of condition No. 33 and No. 35 effectively remove the fundamental elements of the stages of the development, and accordingly does not achieve the orderly development of land as required by the Environmental Planning and Assessment Act 1979.

The deletion of condition No. 35 unlinks the stage development, potentially creating a alternate land use and non-compliances with specific requirements of the Manly DCP. The impact of these non-compliances creates an unsuitable and inappropriate form and scale of development, as well as potential amenity impacts to the neighboring sites and the surrounding area.

However, the deletion of condition No. 33, requiring the land to be subdivided, can be undertaken whilst continuing to achieve the intent of the three stages of the one development. Particularly as no additional non-compliances with the objectives and requirements of the MLEP or the MDCP would be created.

As a result, only the removal of condition No. 33 is supported.

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 2021

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. Mod2021/0658 for Modification of Development Consent DA2020/0237 granted for the construction of a Dwelling House on land at Lot 130 DP 11162, 15 Alto Avenue, SEAFORTH, subject to the conditions printed below:

A. Modify Condition 1 Approved Plans and Supporting Documentation to read as follows:

Development consents DA2020/0236, DA2020/0237, and DA2020/0238 for Stage 1, 2 and 3 are to operate concurrently and are linked to ensure the completed development is consistent with all requirements of Stages 1, 2 and 3, with the resulting development being a dwelling house on Lot 1 and the land subdivided in accordance with DA2020/0236.

The following consent is granted for Stage 1 of the development in accordance with Section 4.22 of the Environmental Planning and Assessment Act 1979.

Stage 1 development consent is granted only for the following:

- construction of a new dwelling, garage/guest room/driveway and associated landscaping.

The works will be consistent with the following table:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan 01 Rev D	12/02/2020	Classic Country Cottages
Ground Floor Plan Rev D	12/02/2020	Classic Country Cottages
First Floor Plan Rev D	12/02/2020	Classic Country Cottages
Southern and West Elevation Rev C	12/02/2020	Classic Country Cottages
Northern and Eastern Elevation Rev C	12/02/2020	Classic Country Cottages
Western and Eastern Elevation & Easter Elevation of Garage and Guest Rev C	12/02/2020	Classic Country Cottages
Section 1 and 2 Rev B	14/12/2019	Classic Country Cottages
Section 3 and Section 4 Rev C	12/02/2020	Classic Country Cottages
Driveway Setout Plan Rev D	12/02/202	Classic Country Cottages
Longitudinal Section of Northern Side Rev B	14/12/2019	Classic Country Cottages
Longitudinal Section of Southern Side Rev B	14/12/2019	Classic Country Cottages

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Construction Impact and Management Statement	March 2019	Grow My Way Tree Services
Floor Study Report	6 March 2020	Water Design Civil Engineers

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

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.

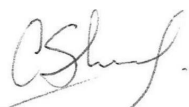
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Delete Condition 33. Subdivision Stage 3 (DA2020/0236) to read as follows:

Delete

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

Signed



Catriona Shirley, Planner

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



Rodney Piggott, Manager Development Assessments