

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0638
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 12 DP 1105469, 12 Montpelier Place MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/0148 for Alterations and additions to a dwelling house including a swimming pool
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:	John Patrick Kelleher Christine Gail Kelleher
Applicant:	Vaughan Patrick Milligan

Application Lodged:	02/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/09/2021 to 24/09/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for modifications as follows:

Basement / Lower Ground

- New internal porthole windows to cellar and stair
- Relocate rainwater tanks into building footprint
- Reconfiguration of storage and plant room

Ground Floor

- Reconfiguration of kitchen walls and skylight
- New coat cupboard and changes to games room door
- Reconfiguration of swimming pool retaining walls
- New rendered masonry eastern boundary fence
- Changes to boundary fencing/walls

First Floor

- Hall A/C duct removed and Bed 2 door repositioned
- New spa to Bed 1 Terrace
- Changes to eastern elevation windows
- Changes to southern elevation ensuite and Bed 2 windows

External

- New and existing aluminium sunshade canopies
- Changes to first floor external wall cladding

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 Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 12 DP 1105469 , 12 Montpelier Place MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the south-western corner of Montpelier Place.</p> <p>The site is generally regular in shape with a primary frontage of 12.055m, secondary frontage of 48.495m and corner splay of 4.2m along the private road, Montpelier Place. The site has a surveyed area of 752.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.</p> <p>The site slopes 7m from rear (south) to front (north).</p> <p>The site contains landscaped front and rear yards, with a number of significant trees and other vegetation within the rear setback.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings and townhouses.</p>

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:

- DA2020/0148 - Alterations and additions to a dwelling house including a swimming pool - Approved 27 April 2020.

- Mod2020/0667 - Modification of Development Consent DA2020/0148 granted for alterations and additions to a dwelling house including a swimming pool - Approved 2 February 2021.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0148 and Mod2020/0667, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
<p>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:</p> <p>(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</p>	<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 DA2020/0148 and Mod2020/0667 for the following reasons:</p> <p><i>"(2) Other modifications 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—</i></p> <p><i>(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"</i></p> <p><u>Comment:</u></p>

Section 4.55 (2) - Other Modifications	Comments
	<p>The proposed changes maintain the single residential use and do not alter the intent of the lot to be developed. The resulting built form and general appearance of the development is materially the same as originally approved. The modifications are to approved structures and are generally contained within the approved development footprint.</p> <p>The modified development, as conditioned, is not considered to result in any significant departures from the previous approval in relation to visual and amenity impacts.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2020/0148 did not require concurrence from the relevant Minister, public authority or approval body.
<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>	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 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 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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><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.</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 clause is not relevant to this application.</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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><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.</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 (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 has been publicly exhibited from 10/09/2021 to 24/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Withheld	MANLY NSW 2095
Withheld	NSW

The matters raised within the submissions are addressed as follows:

- Height and appearance of proposed western boundary fence
Comment:
Condition 19 of DA2020/0148 specified that the proposed western fence is to be a maximum of 1.8m above existing ground level at the property boundary. However, the proposed fencing significantly exceeds 1.8m in height at the boundary in order to meet the pool fencing requirements. The proposed western boundary fence is in contravention of condition 19 and would result in unacceptable height and visual impact when viewed from the adjoining property, particularly given that there is sufficient opportunity to provide the pool fence within the property. As such, a condition is imposed requiring that the western boundary fence does not form part of the pool fencing to ensure that the 1.8m height is maintained in accordance with the approved development consent.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported, without conditions.</p> <p>The application is for modification to the approved development consent DA2020/0148. A modified landscape plan is provided with the modification application and this is acceptable, and the landscape works shall be in accordance with the Landscape Design Concept Plan, Revision J dated 26 May 2021.</p>
NECC (Bushland and Biodiversity)	<p>Supported, without conditions.</p> <p>This application was previously assessed against relevant biodiversity planning controls, and it was concluded that a significant impact to biodiversity is unlikely and several impact mitigation requirements applied via conditions as part of the original development application DA2020/0148. Therefore, as no additional biodiversity impacts are considered likely, the modifications are recommended for approval without conditions.</p>
NECC (Coast and Catchments)	<p>Supported, without conditions.</p> <p>The modification has been assessed in consideration of: Supplied plans and reports Coastal SEPP Manly LEP & DCP The proposal is acceptable</p>
NECC (Riparian Lands and Creeks)	<p>Supported, without conditions.</p> <p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. This site is near Shelly Beach and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the waterway, or on the quantity and quality of surface and ground water flows that it receives.</p> <p>This application is recommended for approval as it is unlikely to have</p>

Internal Referral Body	Comments
	an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Shelly Beach.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A368962_04 dated 9 August 2021).

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 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views) 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:

Clauses 13 and 14 do not apply as the land is within the Foreshores and Waterways Area of the SREP (Sydney Harbour Catchment) 2005.

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 proposal is unlikely to cause increased risk of coastal hazards on the subject site or surrounding land.

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	9.9m (existing)	Proposed works: 8.3m	N/A	Yes
Floor Space Ratio	0.45:1 338.76m ²	0.42:1 316.6	0.42:1 319.2m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.19 Development in St Patrick's Estate	Yes

Detailed Assessment

4.3 Height of buildings

The existing dwelling exceeds the 8.5m height control up to a maximum of 9.9m. The works included in the proposed modification reach a maximum height of 8.3m and comply with the control.

Manly Development Control Plan

Built Form Controls

There are no built form controls under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.10 Safety and Security	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.3 St Patrick's Estate, Manly	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed modifications will not substantially alter the existing/approved building bulk, and will not result in any adverse overshadowing impacts.

3.4.2 Privacy and Security

The proposed modification maintains an appropriate level of privacy to the subject dwelling and adjoining property.

4.1.10 Fencing

Description of non-compliance

The proposed modification includes changes to the approved eastern boundary fence and replacement of the existing timber fence with a new masonry fence. The proposed fencing generally varies in height from 1.7m-2.7m, with a small section at the rear reaching a maximum of 2.9m.

Merit consideration

The private road reserve area immediately adjoining the eastern boundary of the site includes trees and vegetation that will largely screen the proposed fencing. The proposed fence provides privacy to the rear private open space of the dwelling and will not unreasonably impact the streetscape. As such, the proposed front fence to the eastern boundary frontage is supportable despite the non-compliant height.

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. Mod2021/0638 for Modification of Development Consent DA2020/0148 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 1105469, 12 Montpelier Place, MANLY, subject to the conditions printed below:

A. Add Condition No.1B - 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
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Drawing No.	Dated	Prepared By
DA02 Proposed Plans - Lower Ground and Ground	Rev. B, 19 October 2021	Ilario Cortese Architects
DA03 Proposed Plans - First and Roof / Site	Rev. B, 19 October 2021	Ilario Cortese Architects
DA04 Proposed Elevations	Rev. B, 19 October 2021	Ilario Cortese Architects
DA05 Proposed Sections	Rev. B, 19 October 2021	Ilario Cortese Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A368962_04	9 August 2021	Efficient Living 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
Landscape Site Plan	Rev. J, 26 May 2021	Vale Green Life

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

B. Add Condition 19A. Pool Fencing to read as follows:

19A. Pool Fencing

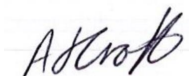
The proposed pool fencing is to be located inside the western boundary of the site and is to be separate from the western boundary fence.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To minimise the visual impact of the development.

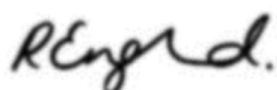
In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Adam Croft, Planner

The application is determined on 05/11/2021, under the delegated authority of:



Rebecca Englund, Manager Development Assessments