

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/2545
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<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 13 DP 1189590, 25 Spring Cove Avenue MANLY NSW 2095
<b>Proposed Development:</b>	Use of part of a dwelling house as a home business
<b>Zoning:</b>	Manly LEP2013 - Land zoned C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Paul Matthew Bolstad Heidi Pfiffner
<b>Applicant:</b>	Alana Nahlous

<b>Application Lodged:</b>	14/01/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	26/01/2022 to 09/02/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	15
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 0.00
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### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for use of part of the dwelling as a home business for the purpose of cake production and decoration.

The proposed use is appropriately defined as a home business and permissible with consent in the C4 zone.

The proposal is limited to the proposed home business use and does not involve any physical works.

### 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 - 5.4 Controls relating to miscellaneous permissible uses

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)

Manly Development Control Plan - 3.8 Waste Management

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 13 DP 1189590 , 25 Spring Cove Avenue MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The site is an irregularly shaped lot located in the south western corner of the St Patrick's Estate, with an overall site area of 996.5sqm. The site gains vehicular access via a shared private driveway from the southern end of Osborne Road.</p> <p>The site accommodates an existing dwelling house.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>The surrounding area includes predominantly residential properties.</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:

**Mod2019/0255** - Section 4.55 (1a) Minor Environmental Impact - Modification of Development Consent DA38/2016 granted for construction of a new part one (1) and two (2) storey dwelling house with attached triple garage driveway swimming pool and landscaping - Approved 20 December 2019.

**DA38/2016** - Part 2 - Section 96 to modify approved Construction of a new dwelling house with attached garage, swimming pool and landscaping - Approved 9 October 2017.

**DA38/2016** - Construction of a new part one (1) and two (2) storey dwelling house with attached triple garage, driveway, swimming pool and landscaping - Approved 16 March 2017.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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 Matters for Consideration	Comments
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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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 of consent.</p> <p><u>Clause 143A</u> of the EP&amp;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><b>(i) Environmental Impact</b> 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><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 Matters for Consideration	Comments
	<b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is mapped as bushfire prone land (vegetation buffer). As the proposal is limited to an additional home business use and does not involve any physical works, no bushfire assessment is considered necessary in this case.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/01/2022 to 09/02/2022 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 15 submission/s from:

Name:	Address:
Mrs Helen Margaret Macindoe	7 / 11 - 15 Spring Cove Avenue MANLY NSW 2095
Mr Peter James Buckle	6 / 11 - 15 Spring Cove Avenue MANLY NSW 2095
Ms Samantha Jule Morton	16 Spring Cove Avenue MANLY NSW 2095
Mr Enda Thomas Hughes	23 Spring Cove Avenue MANLY NSW 2095
Ms Rebecca Elisabet Philipp	22 Spring Cove Avenue MANLY NSW 2095
Mrs Lee Vouch Sar	20 Spring Cove Avenue MANLY NSW 2095
Sam Novak	21 Spring Cove Avenue MANLY NSW 2095
Dr Paul Anthony Kearney	24 Spring Cove Avenue MANLY NSW 2095
Mr Michael John Brown	4 / 11 - 15 Spring Cove Avenue MANLY NSW 2095
Mr Allan Richard Fisk Mrs Diane Elizabeth Fisk	16 / 11 - 15 Spring Cove Avenue MANLY NSW 2095
Tong Niu	113 Ross Street FOREST LODGE NSW 2037
Mr Charles John Haynes	16 Spring Cove Avenue MANLY NSW 2095



Name:	Address:
Carol Reid	3 Spring Cove Avenue MANLY NSW 2095
Ms Tarra-Louise Adam	17 Spring Cove Avenue MANLY NSW 2095
Mr Peter Edward Surgeon	14 Pindari Avenue MOSMAN NSW 2088

In response to the notification of the proposal, Council received a total of 15 submissions, with 8 in objection and 7 in support.

The issues raised in the submissions are addressed as follows:

- **Commercial use**

The submissions raised concerns that the proposal involves a commercial use within a residential area.

Comment:

The proposal is for the use of part of the dwelling for the purpose of a home business. Home businesses are permitted with consent in the C4 Environmental Living zone under the Manly LEP, and the proposal not anticipated to have unreasonable impacts on the amenity of the surrounding residential area. Conditions are imposed restricting the output of the business to 10 kilograms per week and prohibiting deliveries to the site. Any variation to the conditions of consent, including the output of the use, would require the submission of a further application to Council for assessment. As per Council's Environmental Health comments, Council undertakes routine inspections of food premises on an ongoing basis and Council's Building Control team are responsible for investigating non-compliance with the conditions of the consent. Approval of this application is not considered to set a precedent for further home business uses as all development applications submitted to Council are assessed on their merits.

- **Traffic and parking impacts**

The submissions raised concerns that the proposal will result in adverse traffic and car parking impacts.

Comment:

A condition is imposed prohibiting deliveries associated with the proposed home business use to the site. It is not anticipated that the use will generate significant additional vehicle movements or traffic impacts given the limited production output, and sufficient space is provided on the driveway of the subject site to accommodate visitor car parking.

- **Additional waste**

The submissions raised concerns that the proposed use will generate additional waste.

Comment:

The scale of proposed development is not anticipated to generate substantial additional waste. It is proposed to dispose of all associated waste in the standard residential bins and conditions are imposed requiring the preparation of and compliance with a waste management plan.

- **Mechanical ventilation**

The submissions raised concerns that the proposed use will result in odour nuisance.

Comment:

The proposed "low risk" use does not require a full commercial kitchen fit-out, however a condition is imposed to ensure that the design, construction and fit out of the food premises kitchen is compliant with the relevant standards. Council's Environmental Health referral advises that operations of this nature are unlikely to have adverse noise or odour impacts to surrounding residents, and a condition is also imposed to ensure that noise generated by any mechanical ventilation does not disrupt amenity.

## REFERRALS

Internal Referral Body	Comments					
Environmental Health (Food Premises, Skin Pen.)	<p><b>Supported with conditions.</b></p> <p><b>General Comments</b></p> <p>The applicant has provided supporting information regarding the quantity of food to be produced weekly. It has been demonstrated that the business will predominantly be categorised as low risk within the NSW Food Authority document "Advisory Guideline for Enforcement Agencies - Risk-based inspection frequencies". This allows Environmental Health to support the proposal without requiring a full commercial kitchen fit-out to Australian Standards.</p> <p>We further reason that business operations of this nature are unlikely to have a material impact on health amenity (e.g. noise and odour impacts) for surrounding residents. To ensure this, Council's routine food inspections will assess the operations on an ongoing basis. If the business grows/expands beyond a 'low risk' category it may be deemed to be unsuitable for home kitchen operations.</p>					
Strategic and Place Planning (Heritage Officer)	<p><b>Supported without conditions.</b></p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td><p>This modification has been referred as the property sits within the boundary of a State heritage item, being <b>Item I131 - St Patrick's Estate</b>, which is listed on the State Heritage Register and also within Schedule 5 of Manly Local Environmental Plan 2013.</p></td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><p>Details of this State heritage item as contained within the Manly Heritage Inventory are:</p><p><b>Item I131 - St Patrick's Estate</b></p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>This modification has been referred as the property sits within the boundary of a State heritage item, being <b>Item I131 - St Patrick's Estate</b>, which is listed on the State Heritage Register and also within Schedule 5 of Manly Local Environmental Plan 2013.</p>	Details of heritage items affected	<p>Details of this State heritage item as contained within the Manly Heritage Inventory are:</p> <p><b>Item I131 - St Patrick's Estate</b></p>
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Internal Referral Body	Comments		
	<p>Statement of Significance</p> <p>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 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>Isolated physically and geographically on the Manly site, the Seminary buildings reflected the Church's perceptions of its special position and needs in the late 19th century. Social and cultural changes are evident in the further development of the site during the 20th century. The St Patrick's Estate has a significant relationship with the natural environment of North Head. Although isolated from the remainder of North Head by the construction of the sandstone boundary walls and the substantial clearing of the indigenous vegetation on the Estate, the St Patrick's Estate still maintains its historical and visual relationship with North Head.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	
	National Trust of Aust (NSW) Register	Yes	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for internal alterations to the existing dwelling, located in the south-west corner of the State heritage item - St Patrick's Estate. The proposed works involve a new layout to the kitchen area of the dwelling, which is proposed to be used for both commercial and residential purposes. Given the minor scale of</p>		



Internal Referral Body	Comments
	<p>the proposed works, not involving any external changes, the proposed internal alterations are considered to not have any adverse impact upon the significance of the heritage item.</p> <p>As the application affects a State heritage listed item, the application is Integrated Development and requires consultation with Heritage NSW and eventual approval under Section 60 of the Heritage Act, 1977.</p> <p>Further comments - 21 April 2022</p> <p>Further to the revision of the available documents, it is considered that the proposal does not involve any external modifications with minor internal fitout works mainly related to the change of use of the property. Given that the proposal is limited to the change of use within an approved dwelling and do not involve any physical works (as stated under Heritage Act 1977- Section 57) to the heritage listed item, the proposal is not considered to be an Integrated Development and will not have an adverse impact upon the significance of the heritage item.</p> <p>Therefore, no objections are raised and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? No  Is a Heritage Impact Statement required? Yes  Has a Heritage Impact Statement been provided? Yes</p> <p><b>Further Comments</b></p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 20 January 2022</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

## (SREPs)

### SEPP 55 - Remediation of Land

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

### SEPP (Infrastructure) 2007

#### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### SEPP (Coastal Management) 2018

The site is classified as land within the coastal wetlands and littoral rainforests area / land in proximity to coastal wetlands or littoral rainforest / land within the coastal environment area / land within the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

#### 13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped*

- headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposal is for the additional use of the site as a home business and does not involve any physical works. It is not anticipated that there will be any adverse impacts in relation to the above.

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

Comment:

The proposal is not anticipated to result in any adverse impact in relation to the matters referred to in (1) above.

#### **14 Development on land within the coastal use area**

- (1) (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
  - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
  - (iv) *Aboriginal cultural heritage, practices and places,*
  - (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
  - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
  - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed additional use of the site as a home business does not involve any physical works and is not anticipated to have any adverse impacts in relation to the above matters.

#### **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 that land or other land.

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

### Manly Local Environmental Plan 2013

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

### Principal Development Standards

There are no principal development standards under Part 4 of the Manly LEP to consider as part of this assessment.

### Compliance Assessment

Clause	Compliance with Requirements
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
6.5 Terrestrial biodiversity	Yes
6.12 Essential services	Yes
6.19 Development in St Patrick's Estate	Yes

### Detailed Assessment

#### 5.4 Controls relating to miscellaneous permissible uses

##### Compliance with control

##### (2) Home businesses

**If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than 50 square metres of floor area.**

Comment:

The carrying on of the business is limited to the existing kitchen and pantry, which is a total of approximately 26m<sup>2</sup>. As such, the proposal complies with this control.

#### 6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) *protecting native fauna and flora, and*
- (b) *protecting the ecological processes necessary for their continued existence, and*
- (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

- (a) *whether the development is likely to have:*
  - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
  - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
  - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
  - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposal is for use as a home business and does not involve any physical works. As such, it is not considered to give rise to any adverse biodiversity impacts.

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 any significant adverse environmental impact, or*
- (b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—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 development is designed and sited to avoid adverse environmental impact.

## 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 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	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



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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

#### **3.4.4 Other Nuisance (Odour, Fumes etc.)**

The proposed use for cake preparation, being limited to a maximum output of 10 kilograms per week, is not anticipated to result in any adverse public health or amenity impacts to surrounding properties. Council's Environmental Health team raised no concerns in relation to the proposal, subject to the inclusion of conditions in relation to output volume and the design, construction and fit out of the kitchen being in accordance with the relevant standards.

#### **3.8 Waste Management**

A condition is imposed requiring the preparation of, and compliance with, a waste management plan in relation to the ongoing use as a home business.

#### **3.9 Mechanical Plant Equipment**

A condition is imposed to ensure that any mechanical ventilation associated with the proposed use does not disrupt the amenity of surrounding properties.

#### **4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)**

The application advises that there will be one to two deliveries per week to the site. Given that the property is access via a signalised one-way carriageway on Spring Cove Avenue, it is not considered appropriate to receive deliveries in relation to the proposed use. As such, a condition is imposed prohibiting deliveries to the property.

### **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

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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 Development Consent to DA2021/2545 for Use of part of a dwelling house as a home business on land at Lot 13 DP 1189590, 25 Spring Cove Avenue, MANLY, subject to the conditions printed below:

#### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
1.102 Site Plan	May 2015	Tobias Partners
1.04 Ground Floor Plan	May 2015	Tobias Partners
A4.104F Area Details : Pantry	February 2018	Tobias Partners
A4.105 Area Details : Kitchen	February 2018	Tobias Partners

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.

## 2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house and home business. The home business use relates to the kitchen area of the dwelling only, totaling approximately 26m<sup>2</sup>.

A **dwelling house** is defined as:

“**dwelling house** means a building containing only one dwelling.”

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

A **home business** is defined as:

“**home business** means a business, whether or not involving the sale of items online, carried on in a dwelling, or in a building ancillary to a dwelling, by 1 or more permanent residents of the dwelling and not involving the following—

- (a) the employment of more than 2 persons other than the residents,
  - (b) interference with the amenity of the neighbourhood because of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise,
  - (c) the exposure to view, from adjacent premises or from a public place, of unsightly matter,
  - (d) the exhibition of signage, other than a business identification sign,
  - (e) the retail sale of, or the exposure or offer for retail sale of, items, whether goods or materials, not produced at the dwelling or building, other than by online retailing,
- but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.”

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

## 3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

#### 4. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected



- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

## CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

5. **Kitchen Design, Construction and Fit-out of Food Premises Certification**

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of the Food Safety Standard 3.2.3 Food Premises and Equipment.

Reason: To ensure that the kitchen complies with operational design requirements.

6. **Waste Management Plan**

A Waste Management Plan must be prepared for the ongoing operation of the home business use.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure that all waste is disposed of in an appropriate manner.

### ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

7. **Mechanical Plant**

Any mechanical plant equipment on the site shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

8. **Food Production Quantitative Limits**

Food for sale, output must not exceed 10 kilograms per week.

Reason: Comply with risk categories according to NSW Food Authority document "Advisory Guideline for Enforcement Agencies - Risk-based inspection frequencies" to minimise impacts of commercial operations on residential receivers.

9. **Deliveries**

No deliveries of products associated with the home business shall be permitted to the site.

Reason: To ensure the safety and amenity of surrounding properties.

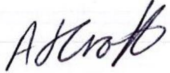
10. **Waste Management**

The ongoing use of the premises shall be in accordance with the prepared Waste Management Plan.

Reason: To ensure that all waste is disposed of in an appropriate manner.

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

**Signed**



**Adam Croft, Planner**

The application is determined on 13/05/2022, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**