

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0717
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<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 50 DP 705739, 30 Fairlight Street FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Modification of Development Consent DA2021/2034 granted for *Demolition of the existing dwelling house and construction of a residential flat building containing 5x3 bedrooms dwellings and basement carpark*
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<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>	Yes
<b>Owner:</b>	30 Fairlight Pty Limited
<b>Applicant:</b>	Minto Planning Services Pty Ltd

<b>Application Lodged:</b>	07/02/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	15/02/2023 to 01/03/2023
<b>Advertised:</b>	15/02/2023
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify the development application approved for 'Demolition works and construction of a residential flat building,' under DA2021/2034.

In detail, this involves a request to modify the approved car parking by converting one of the approved visitor parking spaces to be a residential car parking space. This is a proposed change to the allocation of spaces and there is no proposed change to the design of the car parking area.

Condition 72 currently reads:

*"The development is to maintain the following parking allocation for the life of the development:  
a. 8 x residential parking spaces, with a minimum of 1 space per unit, and inclusive of 1 disabled*

*parking spaces*

*b. 2 x residential visitor spaces,*

*All spaces must be line-marked and identified accordingly.*

*Maneuvering areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.*

*Reason: To ensure the appropriate management of parking on site.”*

The proposal seeks to modify Condition 72 to read as follows:

*“The development is to maintain the following parking allocation for the life of the development:*

*a. 9 x residential parking spaces, with a minimum of 1 space per unit, and inclusive of 1 disabled parking spaces*

*b. 1 x residential visitor spaces,*

*All spaces must be line-marked and identified accordingly.*

*Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.*

*Reason: To ensure the appropriate management of parking on site.”*

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment  
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 50 DP 705739 , 30 Fairlight Street FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the northern side of Fairlight Street.</p> <p>The site is irregular in shape with a frontage of 16.01m along Fairlight Street and a depth of 54.64m. The site has a surveyed area of 861.7m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone and accommodates an existing single-storey dwelling house, triple garage and swimming pool.</p> <p>The site slopes 6.2m from rear (north) to front (south) and includes a crossfall of up to 1m from west to east.</p> <p>The site contains a range of vegetation including 38 trees and smaller planted vegetation.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a range of multi-storey and mid-rise residential flat buildings and detached dwelling houses.</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:

**DA2020/0103** for Demolition works and construction of a Residential Flat Building was withdrawn by

the Applicant in response to numerous concerns raised by Council in relation to:

- Height of buildings and Floor space ratio;
- General amenity, privacy, solar access and views;
- Number of storeys, setbacks and visual bulk;
- Open space and landscaping;
- Non-compliance with various aspects of SEPP 65 and the ADG;
- Vehicular access; and
- Waste management.

The subject application, **DA2021/2034** was submitted to Council on 2 November 2021 and was referred to the Design and Sustainability Advisory Panel on 9 December 2021. The DSAP Report included a total of 24 recommendations in relation to the proposed development, generally relating to:

- Strategic context, urban context: surrounding area character;
- Scale, built form and articulation;
- Access, vehicular movement and car parking;
- Landscape;
- Amenity;
- Facade treatment / Aesthetics; and
- Sustainability.

On 16 December 2021, the Applicant commenced Class 1 appeal proceedings against Council's deemed refusal of the Development Application.

On 1 December 2022, the Land and Environment Court granted consent to the application. This application proposes to modify that consent.

## **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 DA2021/2034, in full, with amendments detailed and assessed as follows:

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

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<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 DA2021/2034.</p> <p>In detail, the proposal does not involve any change to the parking layout of any changes to the built form.</p>
<p>(b) 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.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2021/2034.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

## Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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 in the original consent.</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 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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 15/02/2023 to 01/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Colin Reginald James	32 Fairlight Street FAIRLIGHT NSW 2094
Ms Valerie Jean Bowman	5 / 26 Fairlight Street FAIRLIGHT NSW 2094

The above issues are addressed as follows:

- **Concern with reduction to visitor spaces**

The submissions raised concerns that street parking in the vicinity is always scarce.

It is raised that there is often no parking available on the street.

Comment:

The development consent provides a situation in which there is additional car parking on the street. This modification relates to the change in the allocation of parking (one less visitor space and one additional residential) and no reduction in overall spaces. Further, as noted by Council's Traffic engineer, condition 67 prevents residents from obtaining resident parking permits. As such, the time restricted parking on street becomes more available for visitors and members of the public.

The proposed re-allocation of parking will therefore retain a reasonable parking outcome for the site and area.

- **Traffic safety**

The submissions raised concerns with regard to excessive traffic and traffic safety.

Comment:

The allocation of car parking does not contribute to a situation in which there will be an unreasonable impact on traffic safety.

## REFERRALS

Internal Referral Body	Comments
Traffic Engineer	<p>The applicant seeks to vary consent condition No. 72 which requires that</p> <p>“The development is to maintain the following parking allocation for the life of the development:</p> <p>a. 8 x residential parking spaces, with a minimum of 1 space per unit, and</p> <p>inclusive of 1 disabled parking spaces</p> <p>b. 2 x residential visitor spaces,</p> <p>The developer wishes to amend the above so that there will be 9 residential spaces and 1 visitor parking space.</p> <p>It is noted that the DCP requirements for the site require 7.5 residential spaces and 1.25 visitor spaces. The proposed modification therefore results in a minor undersupply of 0.25 of a visitor parking space which is considered to be of minimal impact. In addition, as condition No.67 has also been applied to the DA approval preventing residents/tenants from obtaining resident parking permits, it is reasonable to allow for the extra offstreet residential parking space, leaving the time restricted on-street parking more available for additional visitors.</p> <p>The proposed change is not opposed on traffic engineering grounds</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

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



#### Compliance Assessment

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

### **Manly Development Control Plan**

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

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

#### **Description of non-compliance**

Manly DCP requires the following parking rate as follows:

- 1 resident parking space for each dwelling (irrespective of the number of bedrooms), plus

- 0.2 resident parking spaces for each 2 bedroom dwelling, plus
- 0.5 resident parking space for each 3 (or more) bedroom dwelling, plus
- 0.25 visitor parking space for each dwelling (irrespective of the number of bedrooms).
- The calculation of resident parking and visitors parking is to be individually rounded up to the next whole number.

Consent has been granted for 5-three bedroom units. According to the rates above, the required parking rates are as follows:

- 7.5 for resident parking (rounded up to 8)
- 1.25 for visitor parking (rounded up to 2)

The proposed reallocation of parking for 9 resident spaces and 1 visitor space would therefore result in a shortfall of visitor parking by 1 space.

### **Merit Consideration**

The development consent provides a situation in which there is additional car parking on the street. This modification relates to the change in the allocation of parking (one less visitor space and one additional residential) and no reduction in overall spaces. Further, as noted by Council's Traffic engineer, condition 67 prevents residents from obtaining resident parking permits. As such, the time restricted parking on street becomes more available for visitors and members of the public.

The proposed re-allocation of parking will therefore retain a reasonable parking outcome for the site and area.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

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

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

- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0717 for Modification of Development Consent DA2021/2034 granted for \*Demolition of the existing dwelling house and construction of a residential flat building containing 5x3 bedrooms dwellings and basement carpark\* on land at Lot 50 DP 705739,30 Fairlight Street, FAIRLIGHT, subject to the conditions printed below:

### A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

#### a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA200 - Basement Plan - Rev H	9/01/2023	DKO Architecture
DA221209_01 - Proposed On Street Parkig - Rev 01	9/12/2022	DKO Architecture

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

**Signed**



**Thomas Prosser, Principal Planner**

The application is determined on 15/03/2023, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**