

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0307
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 12 DP 232985, 40 Bellevue Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house, including the construction of a driveway and parking area.
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Thomas Samuel Rudd Joanne Mary Byrne Terence Emmett Byrne Gabrielle Mary Rudd
Applicant:	Jamie King Landscape Architect

Application Lodged:	04/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/04/2023 to 25/04/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 50,600.00
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PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the alterations and additions to an existing dwelling house, including the construction of a driveway and parking area.

Specially, the works comprise of the following:

- New driveway crossover and hard stand parking space within front setback area to accommodate for two (2) motorcycles; and
- Removal of two (2) trees and various landscaping 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 Development Control Plan - 4.1.5 Open Space and Landscaping

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

SITE DESCRIPTION

Property Description:	Lot 12 DP 232985 , 40 Bellevue Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Bellevue Street, Fairlight.</p> <p>The subject site is legally identified as Lot 12 in Deposited Plan 232985, No. 40 Bellevue Street, Fairlight.</p> <p>The site is rectangular in shape with a street frontage of 6.06m and a depth of 38.10m. The site has a surveyed area of 237.3m².</p> <p>The site is located within the R1 General Residential zone under the provisions of the Manly Local Environmental Plan 2013 and accommodates a semi-attached dwelling house.</p> <p>The site consists of a lawn area to the rear and small garden to the front, with various forms of vegetation and trees.</p> <p>Detailed Description of Adjoining/Surrounding</p>

Development

Adjoining and surrounding development is characterised by dwelling houses and semi-attached dwellings of various architectural styles.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, which resulted in no submissions.

However, Council requested amended plans and additional information to address the following concerns:

- Clause 4.1.6 – Parking, Vehicular Access and Loading of the MDCP 2013/ Development Engineer Concern:** The depth of the proposed hardstand is 4.56m – 4.68m, which does not meet the minimum off-street parking dimensions specified within Australian Standard AS2890.1:2004 in terms of the parking space length of 5.4 metres. Any new parking spaces are required to comply with all relevant Australian Standards.

The amended information/proposal was not received by the due date of Council's Letter (4 May 2023), no correspondence was received. A seven (7) Day Letter was then sent to the applicant, providing additional time, with the new date to be the 16th May 2023. The amended proposal was not received by the revised due date. Council's issues identified in the assessment have therefore, not been satisfied.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control 2013 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed by a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. / This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to car parking design and engineering requirements.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). These matters are capable of being addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed</p>

Section 4.15 Matters for Consideration	Comments
impacts on the natural and built environment and social and economic impacts in the locality	<p>development on the natural and built environment are addressed under the Manly Development Control Plan 2013 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 not considered suitable for the proposed development, in its current form.
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 11/04/2023 to 25/04/2023 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p><i>Unsupported - The proposal is unacceptable.</i></p> <p>The proposed hardstand area does not comply with AS/NZS 2890.1:2004 in terms of the parking space length of 5.4 metres. The plans must be amended to ensure compliance with the minimum length requirement by either modifying the existing dwelling or relocating the hardstand area.</p> <p>Connection of stormwater to the kerb is acceptable.</p>

Internal Referral Body	Comments		
	Development Engineering cannot support the proposal due to insufficient information to address Clause 4.1.6 of the MDCP 2013.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the subject site adjoins a heritage item		
	15 - Street Trees - Bellevue Street		
	Details of heritage items affected		
	<u>Statement of Significance</u> Listed for its aesthetic importance to the streetscape. Principal street of Bellevue Estate early 1980's.		
	<u>Physical Description</u> Mixed planting mainly Brush Box trees (Lophostemon confertus)		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
The proposal seeks consent for a new motorcycle parking pad and driveway with crossover at the front of the site. The street trees in Bellevue Avenue are heritage listed and while there is no brushboxes directly outside this property, there is one outside the adjoining property at 38 Bellevue Street. Heritage raises no objections to the proposal as it is considered to not visually impact upon the street trees or their significance.			
Therefore Heritage raises no objections and requires no conditions.			
Consider against the provisions of CL5.10 of MLEP.			
Is a Conservation Management Plan (CMP) Required? No			
Has a CMP been provided? No			
Is a Heritage Impact Statement required? No			
Has a Heritage Impact Statement been provided? No			

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to conditions.</i></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</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)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no

risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	< 8.5m	-	Yes
Floor Space Ratio	FSR: 0.6:1	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 237.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55.0% of site area (130.5m ²)	32.9% ≈ 87.6m ²	40.2% 42.9m ²	No (See Clause 4.1.5)
4.1.5.2 Landscaped Area	Landscaped area 35.0% of open space (30.66m ²)	60.6% ≈ 53.1m ²	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.0m (less than 50.0%)	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 motorcycle parking spaces (No compliant	-	No (See Clause 4.1.6)

		carparking on site)		
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

4.1.5 Open Space and Landscaping

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan 2013 (MDCP 2013).

The subject site is located within Residential Open Space Area 3, which requires at least 55.0% of the site to be open space, in this case 130.5m². In addition, at least 35.0% of the proposed open space is to be landscaped area, in this instance, 30.66m². The proposed development results in a numerically

non-compliant total open space of 32.9% or 87.6m², presenting a variation of 40.2% to the clause requirements.

It is noted that proposal achieves compliance with the landscaped area, exhibiting a total of more than 35.0%.

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment

The proposal includes removing part of a front garden including two (2) trees for vehicle parking. The vehicle parking is not compliant with Australian Standard AS2890.1:2004. Council will not support vegetation removal and a reduction in open space, for non-compliant parking. The proposal includes a new canopy tree and various shrubs within the front setback area.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment

The proposal exhibits a compliant landscaped area with dimensions capable of accommodating for any future plantings. The site consists of an open space area to the rear and a lawn area within the front setback area. The area to the rear will be retained as existing, however the garden within the front setback is proposed for part removal. To compensate for the garden and tree removal, the proposal includes planting a new canopy tree and various shrubs. However, there is no support for vegetation removal and a reduction in open space, for non-compliant parking.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment

The proposal does not result in any unacceptable impacts to amenity including sunlight, privacy, and views. The proposal is consistent with the surrounding area and streetscape character.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal has been reviewed by Council's Development Engineer, who had no Stormwater concerns.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The subject site is not located within a wildlife corridor, and is unlikely to effect wildlife habitat. In addition, the proposal included a new canopy tree and further shrub plantings, to compensate the removal of various existing vegetation.

As a result, Council cannot support the removal of vegetation and the reduction of open space to provide for non-compliant parking. It is therefore considered that the proposed development is inconsistent with the relevant objectives of the MDCP 2013. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan 2013 (MDCP 2013).

The proposal includes the addition of a driveway crossover and parking area for two (2) motorcycles. The depth of the hardstand is 4.56m – 4.68m, which does not meet the minimum off-street parking dimensions specified within Australian Standard AS2890.1:2004, in terms of the parking space length of 5.4m. Motorcycle parking would be ancillary to providing a compliant car parking space on site. Any new parking spaces are required to comply with all relevant Australian Standards.

Council's Development Engineer requested that the plans be amended to ensure compliance with the minimum length requirement (5.4m). Amendments have not occurred within the provided timeframe given by Council.

As a result of insufficient information to determine or condition this development application, it is considered that the proposed development is inconsistent with the relevant objectives of the MDCP 2013. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

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 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0307 for the Alterations and additions to a dwelling house, including the construction of a driveway and parking area. on land at Lot 12 DP 232985,40 Bellevue Street, FAIRLIGHT, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) & (iii) Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Manly Local Environmental Plan 2013; and Clause 4.1.5 Open Space and Landscaping and Clause 4.1.6 Parking, Vehicular Access and Loading of the Manly Development Control, Plan 2013.

Particulars:

i) The parking space provided has not been designed in accordance with the off-street parking dimensions specified within Australian Standard AS2890.1:2004. Therefore, the proposal is unable to provide for adequate parking on site and fails to achieve a driveway and parking space design that is efficient, safe, and convenient as per the objectives of Clause 4.1.6 Parking, Vehicular Access and Loading.

ii) The proposal fails to meet the numerical requirements for total open space, further reducing an existing non-compliance required by Clause 4.1.5 of the DCP. As the parking area is inadequate in design and fails to provide for safe and convenient parking, a further loss of open space to accommodate such a design, cannot be supported. The proposal therefore fails in providing an acceptable justification for loss of vegetation and open space on site.

iii) Given the inability of the proposal to satisfy the requirements of DCP at 4.1.5 and 4.1.6, it is considered that the proposal fails to satisfy the aims of the Manly LEP. In particular, the proposal does not accord with Clause 1.2 (a)(iv) in that the development does not appropriately respond to the environmental constraints of the site (b)(ii) the proposal does not ensure a high quality landscape area in a residential environment, by virtue of its positioning forward of the building line.

2. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted in support of the application.

Particulars:

i) No information has been provided to acceptably address and amend the non-compliant parking space with Australian Standard AS2890.1:2004, as requested. Therefore, the proposal cannot be appropriately assessed in its current form.

3. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development.

Particulars:

i) The existing improvements on site are such that the proposal is incapable of complying the spatial requirements of parking that meets the requirements of AS2890.1:2004. As such, the site is not considered suitable for the proposed development.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Particulars:

i) The lack of sufficient information and the ability to satisfy the requirements of Clause 4.1.5 Open Space and Landscaping and Clause 4.1.6 Parking, Vehicular Access and Loading of the Manly Development Control Plan 2013, are such that approval of the development is not within the public's interest.

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

Signed



Brittany Harrison, Planner

The application is determined on 23/05/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments