

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0247
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 2352 DP 1256637, 4 Munoorra Street SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2021/1812 granted for construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Aoife Ann Gelson Richard John Gelson
Applicant:	AMDE Construction Pty Ltd
Application Lodged:	24/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	08/06/2022 to 22/06/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 4.4%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 8 March 2022 under Development Application DA2021/1812 for construction of a two storey dwelling house on a vacant allotment that was recently subdivided.

This application was been made pursuant to Section 4.55(1A) of the EP&A Act 1979 seeking to make the following minor amendments to the approved development:

- Delete ground floor window W05 on western elevation.
- Ground floor window W06 on western elevation enlarged and now identified as W05 on modified plans.
- Modify ground floor sliding doors on northern elevation adjacent to approved alfresco.
- Re-locate approved fire place in living room on ground floor.

It is important to note that the proposed building envelope remains unchanged from the previous approval.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 2352 DP 1256637 , 4 Munoorra Street SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Munoorra Street, Seaforth.</p> <p>The site is rectangular in shape with a frontage of 26.76m and a maximum depth of 22.865m. The site has a surveyed area of 610.5sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013. The site is currently undergoing construction for the two storey dwelling house approved under Development Application DA2021/1812. At the time of writing the concrete slab was being poured for the ground floor.</p> <p>The site contains a number of established canopy trees within the northern portion of the site. The site slopes away from the north towards the south, representing an</p>

approximate fall of 2.9m (10.8% gradient).

Description of Surrounding Development

The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses), typically 1 or 2 storeys in height.

Map:



SITE HISTORY

The site was created from a subdivision under Development Application DA2019/0378 for subdivision works and the construction of a dwelling house. The dwelling house was not constructed on the subject site, but on the lot to the south.

Since the creation of the new allotment, the following history is of relevance:

- Development Application DA2021/1812 for construction of a dwelling house approved by Council on 8 March 2022.
- Section 4.55(1) Modification Mod2022/0125 to correct errors in the aforementioned consent. This application was approved by Council on 22 March 2022.
- Construction Certificate CC2022/0349 issued by a Private Certifier on 6 April 2022. A notice of commencement (dated 8 April 2022) was sent to Council. The works have lawfully commenced in accordance with the aforementioned development consents and construction certificate.

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 DA2021/1812, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The modifications to the windows and sliding doors do not prompt any unreasonable privacy impacts to neighbouring properties.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent 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 DA2021/1812 for the following reasons:</p> <ul style="list-style-type: none"> • The approved building envelope remains unchanged subsequent to the proposed modifications, which pertain to window and door changes, including the re-location of an internal fire place. • The modified development will not have a materially different impact when compared to the approved development.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
(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	
(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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 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&A Regulation 2021 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
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 08/06/2022 to 22/06/2022 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 of the application Council received no submissions.

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application (see BASIX Certificate No. 1226164S dated 19 May 2022).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	51

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Biodiversity and Conservation) 2021

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.0m	8.0m	-	Yes
Floor Space Ratio	0.45:1	0.47:1	0.47:1	4.4%	No - however no further non-compliance

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

The maximum floor space ratio (FSR) for development permitted on this site is 0.45:1. The FSR of the dwelling house approved under Development Application DA2021/1812 is 0.47:1, which represents a 4.4% variation to the development standard. However, this variation was supported on merit via Clause 4.6 of Manly LEP 2013 as the applicant's written request adequately demonstrated that compliance with the standard was unreasonable or unnecessary in the circumstances of the case and that there were sufficient environmental planning grounds to contravene the standard. Council's Development Assessment Officer concurred with the applicant's justification and therefore, a variation was provided through Clause 4.6 of Manly LEP 2013.

It is noted that the modified proposal does not change the approved building envelope and that the FSR of 0.47:1 remains unchanged. The modified works only pertain to window changes, doors changes and the re-location of the internal fire place.

Therefore, no further consideration of this control is required for the purpose of this assessment.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 610.5sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 600sqm	1 dwelling on 610.5sqm	1 dwelling on 610.5sqm	Yes
4.1.2.1 Wall Height	North: 7.1m	5.8m	5.8m	Yes
	South: 7.1m	6.7m	6.7m	Yes
4.1.2.2 Number of	2 storeys	2 storeys	2 storeys	Yes

Storeys				
4.1.2.3 Roof Height	Height: 2.5m	2.051m	2.051m	Yes
	Pitch: maximum 35 degrees	20 degrees	20 degrees	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	4.59m, consistent with prevailing setback	4.59m, consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 1.93m (1/3 of wall height)	4.18m (alfresco) - 5.5m (facade)	4.18m (alfresco) - 5.5m (facade)	Yes
	South: 2.23m (1/3 of wall height)	2.42m	2.42m	Yes
	Window: no windows within 3m of side boundaries	W02 setback 2.42m from southern side boundary	W02 setback 2.42m from southern side boundary	No - however no further non-compliance
4.1.4.4 Rear Setbacks	8m	5.845m	5.845m	No - however no further non-compliance
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	60.6% (370sqm)	60.6% (370sqm)	Yes
	Open space above ground 25% of total open space	0%	0%	
4.1.5.2 Landscaped Area	35% of proposed open space	47%	47%	Yes
	3 native trees	6 native trees	6 native trees	Yes
4.1.5.3 Private Open Space	18sqm	23sqm (alfresco)	23sqm (alfresco)	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	5.1m	5.1m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	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	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

4.1.4 Setbacks (front, side and rear) and Building Separation

Rear Setbacks

The Manly DCP 2013 prescribes a minimum rear setback of 8m. The approved dwelling house is setback 5.845m from the rear boundary, which does not satisfy the prescribed requirement. Despite this, the non-compliance was supported on merit due to consistencies with the objectives of this control. In particular, the non-compliant rear setback will have no unreasonable privacy, overshadowing, view sharing or other amenity impacts. This is due to the lower windows to living areas being screened by the boundary fences and the upper windows serving low use bedrooms and bathrooms.

It is noted that the modified works do not change the approved building envelope and thus, the approved non-compliant rear setback remains unchanged. Therefore, no further consideration of this control is required for the purpose of this assessment.

Window Separation Requirement

The Manly DCP 2013 requires windows to be setback at least 3m from side boundaries. The approved dwelling house included a garage window (Window 02) setback 2.42m from the southern side boundary, which does not meet the separation requirement. Despite this, the non-compliance was supported on merit due to the application demonstrating consistencies with the objectives of the control. In particular, the sill height is sufficient to prevent overlooking and the window adjoins a non-habitable room, being a garage.

It is noted that no changes are proposed to window W02 and that no new windows are proposed within 3m of the side boundaries. Therefore, no further consideration of this control is required for the purpose of this assessment.

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 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0247 for Modification of Development Consent DA2021/1812 granted for construction of a dwelling house on land at Lot 2352 DP 1256637,4 Munoorra Street, SEAFORTH, subject to the conditions printed below:

Condition 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
A03 (Revision L) - Site Plan	27 April 2022	G.J. Gardner
A05 (Revision L) - Ground Floor Plan	27 April 2022	G.J. Gardner
A06 (Revision L) - First Floor Plan	27 April 2022	G.J. Gardner
A07 (Revision L) - Elevations	27 April 2022	G.J. Gardner
A08 (Revision L) - Elevations	27 April 2022	G.J. Gardner
A09 (Revision L) - Sections	27 April 2022	G.J. Gardner
A11 (Revision L) - Erosion & Sediment Plan	27 April 2022	G.J. Gardner
A13 (Revision L) - Waste Management	27 April 2022	G.J. Gardner
A15 (Revision L) - Driveway Detail	27 April 2022	G.J. Gardner

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1226164S_02	19 May 2022	Chapman Environmental Services Pty Ltd

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

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

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

Signed



Thomas Burns, Planner

The application is determined on 23/06/2022, under the delegated authority of:



Adam Richardson, Manager Development Assessments