

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0330
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 25 DP 1105469, 25 Montpelier Place MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2022/0509 granted for Alterations and additions to 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:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Julian Anthony Duffy Prue Adele Larcombe
Applicant:	Prue Adele Larcombe

Application Lodged:	27/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	03/07/2023 to 17/07/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2022/0509 granted for alterations and additions to a dwelling house.

The modification propose the following:

- Retaining existing ground level bedrooms and deletion of new proposed bedroom entry door on ground level.
- Modifications to the bathroom and guest ensuite on ground level with laundry to remain as existing.

- Retention of existing level master bedroom
- Modifications to level 1 bathroom
- New linen cupboard on level 1 with laundry chute under lowest shelf
- Minor modifications to door and cupboard location in bedroom 3 on level 1
- New skylight over staircase and existing master bedroom
- Approved study enclosure deleted, raised balcony platform retained

The modification results in a gross floor area reduction of 5.9m² through the deletion of the study and retention of balcony.

AMENDED PLANS

The applicant submitted amended plans during assessment to note that the existing privacy screen on the living room window on the eastern elevation is to be retained. This amendment is in response to the privacy concerns raised in the submission from the adjacent property.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

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 - 4.1.3 Floor Space Ratio (FSR)

SITE DESCRIPTION

Property Description:	Lot 25 DP 1105469 , 25 Montpelier Place MANLY NSW 2095
------------------------------	--

<p>Detailed Site Description:</p>	<p>The subject site consists of one (1) allotment located on the southern side of Montpelier Place.</p> <p>The site is irregular in shape with a frontage of 17.56m along Montpelier Place and a maximum depth of 42.85m. The site has a surveyed area of 571.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part three-storey residential dwelling.</p> <p>The site falls approx. 8m from the south towards the north.</p> <p>The site contains a landscaped front yard with ornamental vegetation and a landscaped rear yard with grass and gardens.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density detached dwellings and townhouses.</p>
--	--

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Application **DA0144/2003** for a 26 lot land subdivision (Precincts 1 & 13 of St Patrick's Estate) was approved on 05/05/2004 by the former Manly Development Assessment Unit.

Application **DA0110/2008** for construction of a two storey dwelling with garage, swimming pool and landscaping was approved on 04/08/2008 by the former Manly Development Assessment Unit.

Application **DA2022/0509** for Alterations and additions to a dwelling house was approved on 20/10/2022 by the Development Determination Panel.

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 DA2022/0509, 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"> • no unreasonable additional amenity impact to adjacent properties or the public domain is expected • the built form of the dwelling will remain generally consistent with the approved development
(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	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0509 for the following reasons:</p> <ul style="list-style-type: none"> • the modification is generally consistent with the approved alterations and additions to the existing dwelling

Section 4.55(1A) - Other Modifications	Comments
modified (if at all), and	<ul style="list-style-type: none"> the modification does not alter the low density residential land use of the site all expected outcomes of the original assessment are maintained under the modification
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (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	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.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 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 '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 2021 (EP&A Regulation 2021)	<p>Part 4, <u>Division 2</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 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. No additional information was requested in this case.</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 matter has been addressed via a condition of consent.</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 matter has been addressed via a condition of consent.</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). This matter has been addressed via a condition of 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 The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 'Matters for Consideration'	Comments
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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the original development application that included a certificate stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. An addendum report (prepared by Bushfire Consultancy Australia, dated 06/06/2023) states the modified development does not alter the recommendations of the original Bush Fire Report.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/07/2023 to 17/07/2023 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 1 submission/s from:

Name:	Address:
Mr Ian Wilton Ms Sharon Lawler Froome	26 Montpelier Place MANLY NSW 2095

The following issue were raised in the submission:

- Privacy**

The submissions raised concerns that the proposed operable screens on the eastern elevation will result in unreasonable privacy impacts upon the adjacent dwelling.

Comment:

The applicant has submitted amended plans to note that the existing privacy screen on the living room window on the eastern elevation will be retained. This is considered to adequately address the privacy concerns.

REFERRALS

No referrals were sent in relation to this application

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A441550_04, dated 01/06/2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal will not cause impacts to the nearby water catchment.

6.7 Aquatic ecology

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
 - (i) a controlled activity approval under the Water Management Act 2000, or*

- (ii) a permit under the Fisheries Management Act 1994,
- (c) whether the development will minimise or avoid—
 - (i) the erosion of land abutting a natural waterbody, or
 - (ii) the sedimentation of a natural waterbody,
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

Comment:

The proposal will not cause impacts to the surrounding natural environment.

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and

(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,

(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,

(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

The proposed works are not considered to have an adverse environmental impact on the water catchment.

Part 6.3 Foreshores and Waterways Area

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—

(a) whether the development is consistent with the following principles—

(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,

(ii) the public good has precedence over the private good,

(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,

(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,

(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,

(d) whether the development promotes water-dependent land uses over other land uses,

(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,

(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,

(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,

(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.

(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—

- (a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*
- (b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*
- (c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*
- (d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*
- (e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*
 - (i) the Foreshores and Waterways Area, and*
 - (ii) public places, landmarks and heritage items.*

Comment:

The proposal is considered to be consistent with the general development provisions of the Foreshores and Waterways Area.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 5 General

2.12 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:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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	8.67m	Unaltered	N/A	As approved
Floor Space Ratio:	0.45:1 (257.3m ²)	0.605:1 (346.3m ²)	0.595:1 (340.4m ²)	32.3% (83.1m ²)	Acceptable, less than approved

Compliance Assessment

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

Detailed Assessment

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (257.3m ²)
Proposed:	0.595:1 (340.4m ²)
Percentage variation to requirement:	32.3%

Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum

permitted by Clause 4.4 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

The Applicant of the original development application adequately demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of that case.

As the modified development results in an overall reduction of FSR, the justification to vary the development standard in the original development application remains applicable to this modification application.

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

The proposed modification results in a 5.9m² reduction of gross floor area compared to the approved development. This is considered to be a sufficient environmental planning ground to vary the FSR development standard as the variation is less than originally approved.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

4.4 Floor space ratio

(1) The objectives of this clause are as follows—

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The bulk and scale of the modified development will be generally consistent with that of the approved development.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The modified development will not result in a fundamental change to the approved building bulk. The level of impact to landscape and townscape features is considered reasonable in the context of the site and surrounds.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

It is considered the modified proposal demonstrates an acceptable visual relationship with the existing low density residential character and landscape of the area.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

It is demonstrated that the proposed development is designed in a manner that minimises impact on adjacent properties and the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres,

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposed development maintains the low density residential land use of the site and provides a more functional dwelling for occupants.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal does not alter the existing residential land use of the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 571.8m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	W: 6.5m (based on nil gradient)	6.5m	Unaltered	Yes
4.1.2.2 Number of Storeys	2	2	Unaltered	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Unaltered, consistent with prevailing setback	Unaltered	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	W: 2.145m (based on wall height)	1.4m (existing)	Unaltered	Acceptable, as existing
4.1.4.4 Rear Setbacks	8m	4m (existing)	Unaltered	Acceptable, as existing
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (314.5m ²)	41% (234.4m ²) [existing]	Unaltered	Acceptable, as existing

4.1.5.2 Landscaped Area	Landscaped area 35% of open space (82m ²)	46.9% (109.9m ²)	Unaltered	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	>18m ²	Unaltered	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Unaltered	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
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
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	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
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.3 St Patrick's Estate, Manly	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.595:1 (340.4m²), which represents a variation of 32.3% to the prescribed 0.45:1 (257.3m²) FSR requirement. This is a reduction of 5.9m² compared to the approved development.

Refer to Clause 4.4 Floor space ratio of MLEP 2013 for a detailed 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 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. Mod2023/0330 for Modification of Development Consent DA2022/0509 granted for Alterations and additions to a dwelling house on land at Lot 25 DP 1105469, 25 Montpelier Place, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-338343 - Mod2023/0330	The date of this notice of determination	Modification of Development Consent DA2022/0509 granted for Alterations and additions to a dwelling house <ul style="list-style-type: none"> • Add Condition No. 1A - Modification of Consent - Approved Plans and supporting documentation

Modified conditions

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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan

22012 S4.55 (1A) 02	A	Ground Floor	Wolski Coppin Architecture	21/08/2023
22012 S4.55 (1A) 03	A	Level 1	Wolski Coppin Architecture	21/08/2023
22012 S4.55 (1A) 04	A	Site / Roof Plan	Wolski Coppin Architecture	21/08/2023
22012 S4.55 (1A) 05	A	Elevations 01	Wolski Coppin Architecture	21/08/2023
22012 S4.55 (1A) 06	A	Elevations 02	Wolski Coppin Architecture	21/08/2023
22012 S4.55 (1A) 07	A	Sections	Wolski Coppin Architecture	21/08/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A441550_04	-	Senica Consultancy Group	01/06/2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

Signed



Nick Keeler, Planner

The application is determined on 23/08/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments