

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0250
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 40 DP 4603, 2 Pacific Parade MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2022/0696 granted for Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2
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:	Melissa Sue Tudhope
Applicant:	Cradle Design

Application Lodged:	10/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify the consent granted under DA2022/0696 for *demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2.*

The proposal involves changes to the basement car parking area to remove the shared parking area, and provide a separate parking area for each dwelling.

DA2022/0696 history

A similar separated parking concept was proposed under DA2022/0696, through amended plans prior to the consideration of the application by the Northern Beaches Local Planning Panel. However, this amended plan was not supported by Council's Traffic officer due to a lack of information showing

appropriate access for the design (including 'headroom' clearance and turning circles).

Under this application, Council's Traffic is satisfied with the additional information provided, including a minimum head clearance of 2.2m.

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 40 DP 4603 , 2 Pacific Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Pacific Parade.</p> <p>The site is regular in shape with a frontage of 12.19 metres (m) and a depth of 36.57m. The site has a surveyed area of 445.6square metres (sqm). The land contains part 2 storey brick dwelling. The land is generally flat with a minor fall toward Pacific Parade. The surrounding area is a low lying part of Manly and subject to minor drainage issues in some places. The proposed ground floor level is above the 1% annual exceedance probability zone.</p> <p>The site contains lawn areas, garden beds and trees. The site is adjacent / near local heritage items in the street (sandstone kerb and street trees).</p> <p>The streetscape is characterised by its tree lined kerb-side</p>

and the historic architecture of many dwellings ranging from federation period to post war and some new houses. Many properties have been substantially renovated and open carports, in the front setback area, are a common feature of the street.

Map:



SITE HISTORY

Pre-lodgement Meeting No.PLM2021/0188 for subdivision and construction of 2 x semi-detached dwellings was held with Council on 12 August 2021. The concluding advice summary included that:

"The proposal is not supported by Council, specifically the variation to the minimum allotment size, is not supported. This is a result of the proposed development consisting of a number of non-compliances relating to:

- *Floor Space Ratio development standard;*
- *Front setback;*
- *Side Setbacks on upper level and basement; and*
- *Driveway access ramp not complying with standards for grades.*

The development will have an adverse visual impact when viewed from Pacific Parade and will be visually prominent when viewed from the adjoining properties at Collingwood Street. A re-design is required to reduce the visual bulk of the building – ensuring the development does not exceed the floor space ratio is critical on allotments that under the minimum allotment size."

The subsequent DA was submitted to Council with minimal changes to the plans and a request for changes to the plans was made pursuant to the issues raised in the PLM notes. The applicant provided amended plans dated 26.9.2022 seeking to address the concerns raised at the PLM and preliminary DA assessment phase.

Development Application No.2019/0471 for alterations and additions to a dwelling house was approved by Council on 20 August 2019. The consent was not progressed to a construction certificate.

The original dwelling house on the site is to be completely demolished and conditions are recommended to ensure the safe handling and appropriate management / disposal, as per Australian standards / WorkCover, for any asbestos / lead paint materials if present in the building structure during demolition works.

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 DA2022/0696, 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> <p>The proposal involves minor changes to the basement area. This allows for parking that is compliant with numerical requirement under the DCP, and with a design to the satisfaction of Council's Traffic officer.</p>
(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 DA2022/0696 for the following reasons:</p> <p>The proposal maintains the approved building envelope and footprint, and maintains the approved situation of two semi-detached dwellings with parking.</p>

Section 4.55(1A) - Other Modifications	Comments
modified (if at all), and	
(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.	The proposal did not require notification in accordance with Council's Community Participation plan (minor internal alterations).

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 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 'Matters for Consideration'	Comments
agreement	
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 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</u> and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent (original 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 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
NECC (Development Engineering)	<p>The proposed amendment to the turn table is to be assessed and supported by Council's Traffic Engineers.</p> <p>Development Engineering support the proposal, with no additional or modified conditions of consent recommended.</p>
NECC (Flooding)	<p>The proposed modification seeks consent for a minor design change to the basement garage layout of the approved development. The property is located outside of the Medium Flood Risk Precinct and predominately outside of the Low flood risk precinct.</p> <p>The modification generally complies with flood controls from:</p> <ul style="list-style-type: none"> • Section 5.4.3 Flood Prone Land from the Manly DCP 2013 • Clause 5.21 of the Manly LEP 2013
Traffic Engineer	<p><u>Proposal description:</u> Modification of Development Consent DA2022/0696 granted for Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> • Traffic Modification Application report, prepared by ParkTransit, Parking and Traffic Design, dated 28 April 2023, • Plans (Master Set), issue H – designed by DU PLESSIS Architects, dated 04/05/2023, and • Traffic Engineer Referral Response to DA2022/0696, emails dated 22/02/2023 and 27/02/2023. <p>There were a number of traffic concerns raised in the traffic referral comments in the emails dated 27/02/2023, which have been addressed in the Traffic Modification Application Report.</p>

Internal Referral Body	Comments
	<p>It is also noted that:</p> <ul style="list-style-type: none"> • According to the latest architectural plans, a 4.5m diameter turntable has been proposed. The traffic report states that "anti-collision" sensors will be installed to prevent any vehicle collisions with the wall. Additionally, "positioning sensors" and a signal system will be put in place to guide residents to the correct location and inform them when to stop. • Swept path plots have been included in Attachment B of the traffic report and demonstrated that access to parking spaces by the B99 vehicles is possible via the turntables as required by AS2890.1. • The revised plans included 2.8m openings to the separate garages. This allows adequate room for the B99 vehicle to access the turntables. Swept path plots have been provided and confirmed that suitable access is available to service a standard B99 vehicle type. • The convex mirror has been proposed in the architectural plans and is adequate to increase the visibility of residents exiting the site. • The plans have been revised and included a minimum headroom of 2.2m. It is noted that vertical clearance plots for a B99 vehicle are included in the traffic report, entering and accessing the garages and demonstrating that there is adequate overhead clearance and that scraping and bottoming do not occur. • Given that the residential parking supply meets DCP requirements (2 parking spaces per each dwelling), the parking needs of residents will be adequately addressed, and residents of the development will therefore not be eligible for resident parking permits. This has already been conditioned. <p>Conclusion</p> <p>The modification application can be supported on traffic grounds and no new conditions are proposed with all previously imposed conditions to remain in place.</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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1283040S and 1283042S).

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

Commitment	Required Target	Proposed
Water	40	40, 41
Thermal Comfort	Pass	Pass
Energy	50	58, 59

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

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

Compliance Assessment

Clause	Compliance with Requirements
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 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
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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

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. Mod2023/0250 for Modification of Development Consent DA2022/0696 granted for Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2 on land at Lot 40 DP 4603,2 Pacific Parade, 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
PAN327869 - MOD2023/0250	The date of this notice of determination	Modification of Development Consent DA2022/0696 granted for Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2 Add Condition 1A

Modified conditions

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03 - Basement Sub-Floor Parking Plan - Rev H	4.05.2023	Du Plessis Architects
DA.07 - Section X-X & Section Y-Y - Rev H	4.05.2023	Du Plessis Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Proposed Semi Detached house (Traffic letter)	28 April 2023	Park Transit - Parking and Traffic Design

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 Prosser, Planner

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



Rodney Piggott, Manager Development Assessments