

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0707
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 2 DP 1071850, 46 Pine Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent 172/02 granted for Alterations & Additions to Dwelling, New Dwelling and Land Subdivision
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:	Lisa Ann Simkins Anthony Murray Simkins
Applicant:	Jennifer Claire Peace

Application Lodged:	16/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/09/2021 to 08/10/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the modification of DA0172/2002 to delete conditions of consent numbered 2, 3, 4, 41, 43 and 44.

These conditions relate to the retention of existing trees identified as T1, T2 and T3 within the property at 46 Pine Street.

DA2020/0961 at 48 Pine Street was approved by Council on 6 November 2020, subject to conditions of consent requiring the relocation of existing stormwater assets to the eastern boundary of No. 48, adjacent to the subject site (No. 46). The Arboricultural Impact Assessment prepared for DA2020/0961 determined that the required stormwater works and associated excavation would result in major encroachments into the tree protection zones of trees T1, T2 and T3.

As such, the subject modification application seeks the deletion of conditions 2, 3, 4, 41, 43 and 44 (listed below) to allow the removal of the trees previously required to be retained (under DA0172/2002) and facilitate the construction of the approved dwelling at 48 Pine Street and the associated stormwater works. Council's Landscape Officer raised no objection to the deletion of conditions and subsequent tree removal works.

Conditions Proposed to be Deleted:

2. The two Brushbox trees on the western side of the site and the Washington Palm in the front yard are to be retained through full compliance with the Arborists Report authored by The Tree Wise Men, Australia Pty Ltd with frequent site inspections to be undertaken by the arborist. These site inspections are to be conducted before, during and after construction and are to be documented and sent to Council within 3 working days of the inspection occurring. Plans are to be amended to indicate the trees to be retained and the changes to structure subsequently required and submitted to Council for approval prior to the issue of the Construction Certificate.

3. Full compliance with Arborist's Report (ref 1133) prepared by Tree Wise Men dated August, 2002 is to be achieved at all times. All required plan amendments are to be made prior to the issue of the Construction Certificate.

4. An Arborist shall investigate the site and report to Council on the health of the protected trees in accordance with the recommendations of the with Arborist's Report (ref 1133) prepared by Tree Wise Men dated August, 2002 and Tree Plan 1133. An inspections is to occur prior to the works commencing to ensure adequate protection measures have been erected. The Arborist must also be present to supervise any excavation, trenching or tunneling within the Primary root Zone (PRZ) of the protected trees. Inspections are to occur every four (4) weeks when work is not occurring in the PRZ zone to ensure that the trees remain adequately protected as well as one (1) once construction has ceased. These inspections are to be documented and sent to Council / Certifying Authority within 3 working days of the inspection occurring.

41. All healthy trees and shrubs identified for retention on the plan must be:

- (i) Suitably marked before any development starts and be suitably protected from damage during the construction process; and
- (ii) Retained unless their location or condition is likely to cause damage and their removal has been approved by Council.

43. The trees to be retained are to be protected from trenching or excavation works or other construction works during the building construction stage. A security bond for \$57,000 (\$19,000 for each) is required to ensure that the trees are protected during the construction stage. The security bond may be in the form of a bank guarantee which must be lodged with Council prior to issue of the Construction Certificate.

44. All trees on the site clear of the building are to be retained and those trees within 7.5m of the building are to be provided with a tree guard and a notice on each guard reading: "This tree is the subject of a Tree Preservation Order by Manly Council". This notice is to be in position prior to any work being commenced on the site.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation

SITE DESCRIPTION

Property Description:	Lot 2 DP 1071850 , 46 Pine Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Pine Street.</p> <p>The site is generally regular in shape with a frontage of 10.82m along Pine Street and a depth of 24.5m. The site has a surveyed area of 263.8m².</p> <p>The site is located within the R1 General Residential zone and accommodates an existing dwelling house.</p> <p>The site slopes approximately 2.5m from front (south) to rear (north).</p> <p>The site contains three significant trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of detached dwellings and residential flat buildings.</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:

DA0172/2002 - Alterations and additions to dwelling, new dwelling and land subdivision - Approved 16 October 2002. The approval of DA0172/2002 included the subdivision of Lot C DP330362 (47 Pacific Parade, Manly) into two lots, works to the existing dwelling at No. 47 and the construction of a new dwelling on the newly created Lot 2 DP1071850 (46 Pine Street, Manly). This approval was granted subject to conditions requiring the retention of two Brushbox trees and a Washington Palm on 46 Pine Street.

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 DA0172/2002, 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
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposed modification is minor in extent, being limited to the deletion of conditions to allow the removal of trees previously required to be retained. There are no changes to the existing dwelling on the site and no adverse amenity impacts to surrounding properties.</p>
<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 modified (if at all), and</p>	<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 DA0172/2002 for the following reasons:</p> <p><i>"(1A) Modifications involving minimal environmental impact 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—:</i></p> <p><i>(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"</i></p> <p><u>Comment:</u></p> <p>The consent as proposed to be modified is substantially the same development as that for which the consent was originally granted. The proposed development retains a single residential use and does not alter the intent of the lot to be developed. The proposed modification is to allow the removal of trees only and the development remains materially the same as originally approved.</p> <p>As such, the modified application is "substantially the same development" as the originally approved development and therefore may be considered under Clause 4.55(1A).</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
<p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

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
<p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p>	<p>See discussion on “Environmental Planning Instruments” in this report.</p>
<p>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</p>	<p>Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.</p>
<p>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</p>	<p>Manly Development Control Plan applies to this proposal.</p>
<p>Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement</p>	<p>None applicable.</p>
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)</p>	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 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 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

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 24/09/2021 to 08/10/2021 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

Internal Referral Body	Comments
Landscape Officer	<p>The application is to modify the development consent DA0172/2002 conditions for property 46 Pine Street that are impacted by the stormwater requirements for property 48 Pine Street under development consent DA2020/0961, whereby stormwater assets within property 48 Pine Street are required to be replaced and repositioned running alongside the boundary with 46 Pine Street.</p> <p>Development consent DA0172/2002 conditions 2, 3, 4, 41, 43, and 44 relate to the retention of existing trees within property 46 Pine Street that are impacted by the relocation of the stormwater assets within property 48 Pine Street. An owners consent letter from the owners of 46 Pine Street is provided for the owner of 48 Pine Street to submit the modification application to remove development consent DA0172/2002 conditions 2, 3, 4, 41, 43, and 44.</p> <p>An Arboricultural Impact Assessment is provided with the modification application that assesses the impacts of the stormwater assets relocation upon two existing Brushbox trees located with property 46 Pine Street. It is determined that the proposed stormwater re-alignment will cause a major tree protection zone encroachment for trees identified as T2 and T3 - Brushbox as well as T1 - Kentia Palm, by extensive excavation of soils that would cause an unacceptable level of risk of tree failure either during construction or post completion.</p> <p>Landscape Referral raise no objections to the removal of the conditions 2, 3, 4, 41, 43, and 44 pertaining to the two Brushbox trees under development consent DA0172/2002 as proposed in this modification, based on the arboricultural investigations and assessment of impact.</p>

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 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

There are no development standards under Part 4 of the Manly LEP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Manly Development Control Plan

Built Form Controls

There are no built form controls under Part 4 of the Manly DCP to consider as part of this assessment.

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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

Council's Landscape Officer commented that the required stormwater works on the adjoining property, 48 Pine Street, would cause an unacceptable level of risk of tree failure either during or post construction. As such, no objection is raised to the deletion of conditions 2, 3, 4, 41, 43, and 44 imposed under DA0172/2002, and the tree removal is supportable.

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 2021

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. Mod2021/0707 for Modification of Development Consent 172/02 granted for Alterations & Additions to Dwelling, New Dwelling and Land Subdivision on land at Lot 2 DP 1071850,46 Pine Street, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Report	14 September 2020	Blues Bros Arboriculture

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.

B. Delete Condition 2 to read as follows:

2. DELETED

C. Delete Condition 3 to read as follows:

3. DELETED

D. Add Condition 4 to read as follows:

4. DELETED

E. Delete Condition 41 to read as follows:

41. DELETED

F. Delete Condition 43 to read as follows:

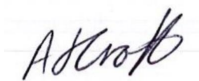
43. DELETED

G. Delete Condition 44 to read as follows:

44. DELETED

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

Signed



Adam Croft, Planner

The application is determined on 12/10/2021, under the delegated authority of:



Rebecca Englund, Manager Development Assessments