

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0387
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 12 DP 1105469, 12 Montpelier Place MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/0148 granted for Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	John Patrick Kelleher Christine Gail Kelleher
Applicant:	John Patrick Kelleher

Application Lodged:	02/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	11/08/2022 to 25/08/2022
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 the approved first floor Bed 2 privacy screen.

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 12 DP 1105469 , 12 Montpelier Place MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the south-western corner of Montpelier Place.</p> <p>The site is generally regular in shape with a primary frontage of 12.055m, secondary frontage of 48.495m and corner splay of 4.2m along the private road, Montpelier Place. The site has a surveyed area of 752.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.</p> <p>The site slopes 7m from rear (south) to front (north).</p> <p>The site contains landscaped front and rear yards, with a number of significant trees and other vegetation within the rear setback.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by 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:

- DA2020/0148 - Alterations and additions to a dwelling house including a swimming pool - Approved 27 April 2020.
- Mod2020/0667 - Modification of Development Consent DA2020/0148 granted for alterations and additions to a dwelling house including a swimming pool - Approved 2 February 2021.
- Mod2021/0638 - Modification of Development Consent DA2020/0148 for Alterations and additions to a dwelling house including a swimming pool - Approved 5 November 2021.
- Mod2022/0039 - Modification of Development Consent DA2020/0148 granted for alterations and additions to a dwelling house including a swimming pool - Approved 18 February 2022.

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 DA2020/0148 and subsequent modifications, 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 proposed modification is minor in extent, relating to a privacy screen only. There is no significant change to the approved dwelling form and minimal impact to surrounding properties.</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>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 DA2020/0148 for the following reasons:</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 the single residential use and does not alter the intent of the lot to be developed. The proposed modification involves a minor change to an approved privacy screen. As such, 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 Section 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>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</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
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 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><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters 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 clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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 (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

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/08/2022 to 25/08/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments					
NECC (Bushland and Biodiversity)	The proposed modification is within the existing development footprint and will not result in any additional impact to terrestrial biodiversity. Existing biodiversity conditions of the original consent are to be retained.					
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none">• Supplied plans and reports;• Coastal Management Act 2016;• State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.10, 2.11, 2.12); and• Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The application is supported without conditions.</p>					
NECC (Riparian Lands and Creeks)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none">- Supplied plans and reports;- Coastal Management Act 2016;- State Environmental Planning Policy (Resilience and Hazards) 2021; and- Relevant LEP and DCP clauses <p>The proposal is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of this location.</p>					
Strategic and Place Planning (Heritage Officer)	<div>No</div> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td>This modification application has been referred as the site adjoins land which is part of Item I131 - St Patrick's Estate. 151 Darley Road, Manly, which is listed as a State heritage item in Schedule 5 of Manly LEP 2013.</td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><p>Details of this heritage item in the vicinity, as contained within the Heritage Inventory, are:</p><p>Item I131 - St Patrick's Estate. 151 Darley Road, Manly</p><p><u>Statement of Significance</u></p><p>St Patrick's Estate is a site of national heritage significance. The unparalleled grandeur of the cultural landscape, including its setting, buildings and landscape components, as well as the history it embodies, reflects a unique physical manifestation of the Catholic Church in Australia, not seen in any other location in the country.</p><p>The site exemplifies an important period in the Church's history in</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	This modification application has been referred as the site adjoins land which is part of Item I131 - St Patrick's Estate. 151 Darley Road, Manly , which is listed as a State heritage item in Schedule 5 of Manly LEP 2013.	Details of heritage items affected	<p>Details of this heritage item in the vicinity, as contained within the Heritage Inventory, are:</p> <p>Item I131 - St Patrick's Estate. 151 Darley Road, Manly</p> <p><u>Statement of Significance</u></p> <p>St Patrick's Estate is a site of national heritage significance. The unparalleled grandeur of the cultural landscape, including its setting, buildings and landscape components, as well as the history it embodies, reflects a unique physical manifestation of the Catholic Church in Australia, not seen in any other location in the country.</p> <p>The site exemplifies an important period in the Church's history in</p>
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Internal Referral Body	Comments		
	<p>Australia, as well as the vision of Cardinal Moran, and for that reason has great significant to Australian Catholics, as well as the broader community.</p> <p>The built elements, particularly Moran House with its Gothic Revival architectural style, reflect both the romanticism of Cardinal Moran's vision for the Australian Catholic Church, as well as the austere nature of the Church at that time. Sited on the prominent northern side of North Head, overlooking Manly and the surrounding area, St Patrick's has become a landmark recognised by locals and visitors alike. Despite recent redevelopments of parts of the site, and the adaptive reuse of the key buildings, the site has retained its integrity and still presents as a cohesive whole.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	Adjoining land to south
	National Trust of Aust (NSW) Register	Yes	Adjoining land to south
	RAIA Register of 20th Century Buildings of Significance	No	
	Other		
	Consideration of Application		
	<p>This application proposes a modification of Consent DA2020/0148 which approved alterations and additions to an existing dwelling house, including a new pool and landscaping works. This original DA was not referred for heritage comment.</p> <p>This application only proposes one modification to a privacy screen on one of the windows. There is no change to the bulk or scale of the dwelling.</p> <p>This site adjoins the State listed St Patrick's Estate on its southern boundary. Immediately adjoining this southern boundary there is landscaping and pathways on St Patrick's Estate. This modification only proposes one change to a building element and will have no impact upon the adjoining State heritage item. The dwelling is located approximately 17 metres from the rear, southern boundary.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013:</u></p>		

Internal Referral Body	Comments
	<p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A</p> <p>Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>
	<p>Further Comments</p> <p>COMPLETED BY: Janine Formica, Heritage Planner</p> <p>DATE: 9 August 2022</p>

External Referral Body	Comments
Aboriginal Heritage Office	The proposal was referred to the AHO, with no objections raised subject to the previously imposed conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.
- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iii) foreshores,
 - iv) the visual amenity and scenic qualities of the coast, including coastal

headlands,
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

- b) is satisfied that:
- i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The site is located within the coastal environment and coastal use areas. The proposed changes are located above ground level within the approved building footprint and do not alter the previous assessment against the provisions of the SEPP.

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:

The proposal is unlikely to cause increased risk of coastal hazards on the subject 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

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

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.19 Development in St Patrick's Estate	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
3.8 Waste Management	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.3 St Patrick's Estate, Manly	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	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. Mod2022/0387 for Modification of Development Consent DA2020/0148 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 1105469, 12 Montpelier Place, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03 First and Roof / Site	Rev. C, 5 July 2022	Ilario G Cortese Architects
DA04 Proposed Elevations	Rev. D, 5 July 2022	Ilario G Cortese Architects

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

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

Signed



Adam Croft, Planner

The application is determined on 26/08/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments