

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0435
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Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot B DP 391849, 2 Herbert Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/0394 granted for alterations and additions to a dwelling house
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:	Simon Thomas Schultheiss Gillian Janice Bryant
Applicant:	Rapid Plans Pty Ltd

Application Lodged:	28/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/07/2021 to 21/07/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of the following modifications to approved development application DA2020/0394. The following works are proposed:

- New ground floor walls at the northern side of the dwelling
- Modified new rear deck and stairs
- Modified new turning bay and retaining walls
- Modified new 1st floor addition with sheet roof
- Modified new front and rear roof additions
- New roof eaves to existing garage
- Modified windows
- Internal reconfiguration

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 - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot B DP 391849 , 2 Herbert Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Herbert Street.</p> <p>The site is a battle-axe allotment with an access handle from Herbert Street 5.18m wide and 27.925m long. Beyond the access handle, the site is an L-shape with a maximum width of 37.115m and a maximum depth of 51m. The site has a surveyed area of 755.5m².</p> <p>The site is located within the R1 General Residential zone.</p> <p>The site slopes approximately 3.5m from front (south) to rear (north).</p> <p>The site contains five significant trees and a range of similar vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by a variety of residential development including detached and semi-detached dwellings, dual occupancies and residential flat buildings.

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:

- DA2020/0394 for Alterations and additions to a dwelling house was approved on 1 June 2020.

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 DA2020/0394, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The proposed modification works are substantially the same as those already approved • The building footprint and built form generally remain as approved • The proposed modification is consistent with the character of the surrounding locality
(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 DA2020/0394 for the following reasons:</p> <ul style="list-style-type: none"> • The works are not considered to have any environmental impact above that considered in the original application • The building footprint and built form generally remains as approved
(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 2000, Manly Local Environment Plan 2011 and Manly Development Control 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.	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	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.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 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 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. Additional information was requested in relation to the size, materials and location of the windows along the eastern elevation of the dwelling.</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 matter has been addressed via a condition in the original consent.</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 matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 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>
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 has been publicly exhibited from 07/07/2021 to 21/07/2021 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
NECC (Development Engineering)	The applicant proposed to increase the depth of the excavation on the original turning bay. Development Engineering has no objection to the application. No additional engineering condition is required.

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.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A370240_02 dated 22 June 2021).

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

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
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Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.442m	8.5m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 453.3m ²	FSR: 0.275:1 208.1m ²	FSR: 0.3:1 229.4m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 755.5m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	E: 7.2m	7m	7m	Yes
	N: 6.5m	GF (Deck): 2.6m	2.6m	Yes
		GF (Dwelling): 4.7m	4.7m	Yes
	W: 7.2m	5.5m - 6.27m	5.5-6.27m	Yes
4.1.2.2 Number of Storeys	2	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.8m	1.8m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Entry portico: 4.5m	4.5m	No
		Dwelling: 6.6m	6.6m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E (FF): 2.33m	8.1m	8.1m	Yes
	N (GF Deck): 0.87m	1.2m	1.6m	Yes
	N (GF Dwelling): 1.57m	2.5m	2.5	Yes
	N (FF): 2.33m	7.4m	7.4m	Yes
	W (FF): 1.83m - 2.1m	2.1m	2.1m	Yes
4.1.4.4 Rear Setbacks	8m	16m	14.9m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% of site area	40% 302.2m ²	37% 282.3m ²	No

Residential Open Space Area: OS3	415.5m ²			
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	82.7% 250.4m ²	83% 236.4m ²	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	> 18sqm	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	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
4.1.1.1 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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposal seeks to modify a number of the approved windows. New windows are also proposed along the eastern, southern and western elevation of the new study.

The modification to the approved windows seeks to provide for a minor increase in size and replacement of approved glazed louvers with double sliding glazing (windows 5, 8 and 9) along the northern elevation. The modification is not expected to have any unreasonable impacts and is consistent with the findings of the original development application.

The proposed new first floor windows to the study are sufficiently setback from the boundary of the site and are not expected to have any additional impacts above those considered in the original application.

4.1.5 Open Space and Landscaping

The proposal comprises of a minor reduction in open space area. The site includes an access handle and associated driveway/turning area which takes up approximately 239m² of the site, which otherwise could be contributed to the open space calculation. If this area were included then the proposal would comply. Given the site constraints the proposed open space area is considered acceptable and is sufficient in providing private open space to meet the needs of the residents.

Additionally, it is not expected there will be any impacts above those considered in the approved development application.

4.4.5 Earthworks (Excavation and Filling)

The modification includes further excavation to accommodate modifications to the approved turning bay/hardstand area to the south of the dwelling.

The rock and surrounding area has been subject to significant previous alteration and is not considered to be a prominent feature of the site. Previous assessment outcomes of the earthworks in DA2021/0394 remains applicable to the modification application. Additionally the works have been assessed and are supported by Council's Development Engineer, subject to conditions of consent of the original development application.

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. Mod2021/0435 for Modification of Development Consent DA2020/0394 granted for alterations and additions to a dwelling house on land at Lot B DP 391849,2 Herbert 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DAMOD1003 Site Plan	22 June 2021	Rapid Plans
DAMOD1004 FSR Plan	22 June 2021	Rapid Plans
DAMOD1008 Demolition Lower Ground Floor Plan	22 June 2021	Rapid Plans
DAMOD1009 Demolition Ground Floor Plan	22 June 2021	Rapid Plans
DAMOD1010 Demolition Roof Plan	22 June 2021	Rapid Plans
DAMOD1011 Excavation & Fill Plan	22 June 2021	Rapid Plans
DAMOD1013 Landscaped Open Space Plan Proposed	22 June 2021	Rapid Plans
DAMOD1015 Sediment & Erosion Plan	22 June 2021	Rapid Plans
DAMOD1016 Waste Management Plan	22 June 2021	Rapid Plans
DAMOD1017 Stormwater Plan	22 June 2021	Rapid Plans
DAMOD2001 Lower Ground Floor	22 June 2021	Rapid Plans
DAMOD2002 Ground Floor	22 June 2021	Rapid Plans
DAMOD2003 First Floor	22 June 2021	Rapid Plans
DAMOD2004 Roof	22 June 2021	Rapid Plans
DAMOD3000 Section 1	22 June 2021	Rapid Plans
DAMOD4000 Elevations 1	22 June 2021	Rapid Plans
DAMOD4001 Elevations 2	22 June 2021	Rapid Plans
DAMOD4002 Elevations 3	22 June 2021	Rapid Plans
DAMOD5001 Materials and Colour Sample Board	22 June 2021	Rapid Plans

Engineering Plans		
Drawing No.	Dated	Prepared By
Ground Floor Drainage	March 2020	NB Consulting Engineers
Stormwater Management Drainage Plans and Details	March 2020	NB Consulting Engineers

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

f) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
DAMOD1014 Landscape Plan	22 June 2021	Rapid Plans

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	14 May 2021	Rapid Plans

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



Clare Costanzo, Planner

The application is determined on 12/08/2021, under the delegated authority of:



Anna Williams, Manager Development Assessments