

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| Application Number: | Mod2019/0548 |
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| Responsible Officer: | Megan Surtees |
| Land to be developed (Address): | Lot 14 DP 1012867, 11 Birkley Road MANLY NSW 2095 |
| Proposed Development: | Modification of Development Consent DA2018/2026 granted for alteration and additions to a dwelling including construction of double garage |
| 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: | Thomas Olaf Severin Sherington |
| Applicant: | Milestone (Aust) Pty Ltd |

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|----------------------------------|---|
| Application Lodged: | 07/11/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 19/11/2019 to 03/12/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks consent to modify consent DA2018/2026 in the following ways:

- Installation of two (2) windows along the northern elevation on the lower ground floor level.
- Glass pavers at the entry-way to act as a skylight to the lower ground floor level.
- Internal reconfiguration to lower ground floor level.

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 - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

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|-----------------------------------|--|
| Property Description: | Lot 14 DP 1012867 , 11 Birkley Road MANLY NSW 2095 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the western side of Birkley Road.</p> <p>The site is regular in shape with a frontage of 7.0m along Birkley Road and a depth of 45.7m. The site has a surveyed area of 319.5m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two (2) and three (3) storey semi-detached residential dwelling.</p> <p>The site has an easterly orientation and a slope of 22.5% falling from the rear of the property towards the street frontage.</p> <p>The site has existing gardens located in the front and rear yards. The rear yard has a small area of turf with two (2) small trees. The front yard has a small garden bed and a small area of turf.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two (2) and three (3) storey semi-detached residential 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:

- Development Application for alterations and additions; approved; 10.2010.413.1
- Construction Certificate; 11.2010.413.1
- Development Application for alterations and addition; approved; DA2018/2026
- Notice of Commencement for DA2018/2026; NOC2019/0839
- Construction Certificate for DA2018/2026; CC2019/0741

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 DA2018/2026, 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 | Yes The modification, as proposed in this application, is considered to be of minimal environmental impact. |
| (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 | 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 DA2018/2026 |
| (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 2013 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. | See discussion on "Notification & Submissions Received" in this report. |

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | None applicable. |
| | |

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Manly Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiiia) – 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. 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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

| Name: | Address: |
|-----------------------|------------------------------------|
| Mrs Maryann Novakovic | 9 / 100 Sydney Road MANLY NSW 2095 |

The following issues were raised in the submissions and each have been addressed below:

- Noise Restriction
- Hours of Construction
- 'No Parking' signs to be erected

The matters raised within the submissions are addressed as follows:

- **Noise Restriction**

Comment:

A resident of the apartment building at 100-104 Sydney Road has raised concern with regards to the level of construction noise that may arise during the construction period. A condition of consent was included under the original consent (DA2018/2026) to ensure any noise arising from the site works be controlled in accordance with the requirements as outlined in the *Protection of the Environment Operations Act 1997* and guidelines in the New South Wales Environment Protection Authority Environmental Noise Control Manual. This condition is not proposed to be modified or deleted, and as such, the condition remains and is to be complied with.

- **Hours of Construction**

Comment:

A resident of the apartment building at 100-104 Sydney Road has requested the hours of construction are to be weekdays only, between the hours of 8am to 5pm. Should the application be approved, Council will apply a *General Requirements* condition which states that building construction hours are restricted to:

- 7:00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

The abovementioned construction hours are reasonable.

- **'No Parking' signs to be erected.**

Comment:

A resident of the apartment building at 100-104 Sydney Road has requested that 'No Parking' signs are to be erected in the vicinity of 11 Birkley Lane to ensure safe vehicle access to and from Birkley Lane and Parkview Lane. A condition of consent was included under the original consent (DA2018/2026) to ensure the Applicant provides a Traffic Management Report/Plan to ensure the safe maneuvering of vehicles throughout the construction stage. This condition is not proposed to be modified or deleted, and as such, the condition is to be complied with.

Additionally, Parkview Lane and Birkley Lane have allocated parking zones that are applicable to all vehicles. Rangers regularly patrol the streets to ensure compliance with parking zones. However, if it is felt that vehicles do not adhere to these parking zones, please contact Council.

REFERRALS

| Internal Referral Body | Comments |
|--|---|
| Strategic and Place Planning (Heritage Officer) | HERITAGE COMMENTS |
| | Discussion of reason for referral |
| | The proposal has been referred to Heritage as it is a listed heritage item - Item 185 - Group of dwellings - at 1-25 Birkley Road, Manly. |
| | Details of heritage items affected |
| | <p>Details of the heritage item as contained within the Manly heritage inventory is as follows:</p> <p><u>Statement of significance:</u> 1-25 Birkley Road (from Sydney Road to Raglan Street) is a heritage item as the contribution made by these buildings to the streetscape is of major significance in that they are unified by period, massing and scale and because they represent a strong visual link with post Federation architecture of the 1920's-30's.</p> <p><u>Physical description:</u> Group of substantial brick, stucco, slate or tiled roof buildings representing Post Federation architecture of the 1920's and 1930's.</p> |

| Internal Referral Body | Comments | | |
|------------------------|---|----|--|
| | Much original detail intact. The buildings are unified by style (period), massing and scale. | | |
| | Other relevant heritage listings | | |
| | Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 | No | |
| | Australian Heritage Register | No | |
| | NSW State Heritage Register | No | |
| | National Trust of Aust (NSW) Register | No | |
| | RAIA Register of 20th Century Buildings of Significance | No | |
| | Other | No | |
| | Consideration of Application | | |
| | <p>The proposed S4.55 application seeks consent for minor alterations to the approved DA such as extending the excavation to create a bathroom and storage area; a new window opening into the side facade of the original sandstone wall; inserting glass pavers into the entry stair landing and some internal changes.</p> <p>It is considered that the changes will not affect the heritage fabric of the building and the significance of the Group of Dwellings, therefore the application is acceptable on heritage grounds.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> | | |
| | Further Comments | | |
| | <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 20 November 2019</p> | | |

| External Referral Body | Comments |
|------------------------|---|
| Ausgrid: (SEPP Infra.) | 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 |

| External Referral Body | Comments |
|------------------------|--------------|
| | recommended. |

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. A335448_02 on 29 October 2019).

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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.

Manly Local Environmental Plan 2013

| | |
|--|-----|
| Is the development permissible? | Yes |
| After consideration of the merits of the proposal, is the development consistent with: | |
| aims of the LEP? | Yes |
| zone objectives of the LEP? | Yes |

Principal Development Standards

| Standard | Requirement | Approved | Proposed | % Variation | Complies |
|---------------------|-------------|-------------|------------|-------------|----------|
| Height of Buildings | 8.5m | 5.7m | Unchanged | N/A | Yes |
| Floor Space Ratio | FSR: 0.75:1 | FSR: 0.45:1 | FSR: 0.5:1 | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 4.3 Height of buildings | Yes |
| 4.4 Floor space ratio | Yes |
| 4.5 Calculation of floor space ratio and site area | Yes |
| 5.10 Heritage conservation | Yes |
| Schedule 5 Environmental heritage | Yes |

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 319.5m ² | Requirement | Approved | Proposed | Complies |
|--|-----------------------------|--|-----------------------------------|----------|
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | 1.7m (based on wall height) | Nil | 1.8m (approx) (northern boundary) | Yes |
| | Windows: 3m | N/A (original consent had no additional windows) | 1.8m | No |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| 3.2 Heritage Considerations | Yes | Yes |
| 4.1 Residential Development Controls | Yes | Yes |
| 4.1.3 Floor Space Ratio (FSR) | Yes | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| 4.4.2 Alterations and Additions | Yes | Yes |
| Schedule 1 – Maps accompanying the DCP | Yes | Yes |

Detailed Assessment

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

4.1.4.2 Side setbacks and secondary street frontages.

This Clause requires all new windows from habitable dwellings that face the side boundary to be setback at least 3m from the side boundary. The proposed window and skylight along the northern elevation will be setback 1.8m from the northern side boundary. This represents a 40% variation to the minimum requirements.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed windows are located along the northern elevation, and therefore does not impact upon the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed window and skylight will be located along the northern elevation on the lower ground level. Due to the slope of the land, the window and skylight will have a sill height ranging from 0.3m for

the skylight and 1.1m for the window from the existing ground level. Both the skylight and window are frosted. As such, the window and skylight provides a positive contribution to the local amenity of Birkley Road.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

No unreasonable amenity impacts will arise as a result of the proposed modifications.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed modifications will not impact upon the natural features of the site.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site is not within a bush fire prone area. Therefore, this objective is irrelevant.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019

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. Mod2019/0548 for Modification of Development Consent DA2018/2026 granted for alteration and additions to a dwelling including construction of double garage on land at Lot 14 DP 1012867, 11 Birkley Road, 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 |
| DA02 | 22 October 2019 | C2 Design |

| | | |
|------|-----------------|-----------|
| DA05 | 22 October 2019 | C2 Design |
|------|-----------------|-----------|

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|-----------------|-----------------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| BASIX Certificate A335448_02 | 29 October 2019 | Weir Phillips Architects |
| Heritage Impact Letter | 25 October 2019 | Weir Phillips Heritage & Planning |

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



Megan Surtees, Planner

The application is determined on 12/12/2019, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments