

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0188
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 2 DP 1134642, 1 Kangaroo Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/0121 granted for reconstruction of front boundary wall
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:	Presbyterian Church NSW
Applicant:	PWS Building Consultancy

Application Lodged:	12/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/05/2020 to 03/06/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 3 April 2020 under DA2020/0121 for the reconstruction of a front boundary wall. A boundary identification survey was not submitted with DA2020/0121. Under this consent, a condition was imposed that required the applicant to obtain a boundary identification survey prior to the issue of a Construction Certificate, to accurately locate the existing boundary wall in relation to the property boundaries. To ensure the structure was located within the property boundaries, an additional condition was imposed that read *"The applicant is to ensure that all works are located wholly within the property boundaries"*.

Subsequent to the receipt of the boundary identification survey, it was identified that the existing wall encroached into the Road Reserve by 20mm at the base of the southern boundary (Raglan Road frontage) and 45mm at the base of the eastern boundary (Kangaroo Street frontage). It is noted that the encroachments occur at the base of the existing front boundary wall and that the top of the wall is located behind the boundary lines.

This Section 4.55(1A) Modification has been submitted seeking to make the following changes:

- Delete condition No. 5 which reads *"The applicant is to ensure that all works are located wholly within the property boundaries"*.

The intention of the modified proposal is to allow the reconstructed boundary wall to retain its existing location.

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 Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 4.1.10 Fencing
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 2 DP 1134642 , 1 Kangaroo Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the corner of Kangaroo Street (western side) and Raglan Street (northern side) in Manly. Vehicular and pedestrian access is provided via the primary frontage along Kangaroo Street. The site has a small frontage of approximately 1.52m along Augusta Lane that is provided via an access handle. It is noted that the frontage to Augusta Lane is bordered by a fence.</p> <p>The site is located within the R1 General Residential zone</p>

pursuant to the MLEP 2013 and accommodates St Andrews Manse, which is a two (2) storey sandstone structure with white verandahs and gable ends. The structure is identified as Heritage Item No. I217 'St Andrew's Hall and manse' within Schedule 5 of the MLEP 2013.

The site falls from the northern boundary towards the southern boundary (secondary frontage). A number of small trees and shrubs are located along the primary and secondary frontages.

The site is identified as containing 'Acid Sulfate Soils Class 5' under the provisions of the MLEP 2013.

The site is identified on the 'Sydney Harbour Catchment Map' pursuant to the SREP (Sydney Harbour Catchment) 2005.

Detailed Description of Adjoining and Surrounding Development

Adjoining and surrounding development comprises a mix of commercial and residential development, with the locality also accommodating an early education care facility, private recreation areas and public recreation areas. A number of heritage items are located within the area, with the Pittwater Road Conservation Area being located approximately 80m to the east.

Map:



SITE HISTORY

The site has been used by the Presbyterian community for a significant period of time dating back to

1891. A search of Council's records has revealed the following relevant history:

- Development Application **DA2020/0121** for reconstruction of front boundary wall approved by Council on 3 April 2020.

Site Visits

A site visit was undertaken at the subject site on 2 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 DA2020/0121, 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 modified proposal will ensure the location of the existing masonry wall is retained, thereby ensuring no unreasonable streetscape impacts arise. • The height of the approved reconstructed wall will remain unchanged. • The modified proposal will not have an adverse impact on the heritage significance of Heritage Item No. I217 'St Andrew's Hall and manse' (located on the subject site) or adjoining and adjacent heritage items within

Section 4.55(1A) - Other Modifications	Comments
	the 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 DA2020/0121 for the following reasons:</p> <ul style="list-style-type: none"> • The height of the approved reconstructed wall will remain unchanged. • The materials of the approved reconstructed wall will remain unchanged. • The location of the approved reconstructed masonry wall will remain unchanged.
(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 2013.
(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

Section 4.15 'Matters for Consideration'	Comments
	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 2013 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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to owners consent and a site plan.</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 2013 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	No submissions were received.
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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Road Reserve	No objection is raised to the minor encroachment of the existing wall into Council's road reserve. No impact on existing road assets.

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 community 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 community land use.

SEPP (Infrastructure) 2007

Development Application DA2020/0121 was referred to Ausgrid for comment. Ausgrid raised no objections to the proposal, subject to conditions. The recommended conditions were included as part of Development Consent DA2020/0121. No further comments were provided by Ausgrid for the modified proposal.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment, therefore the provisions of this plan apply to this development. Accordingly, the proposed development is assessed against the provisions entailed within Clause 2(1), Clause 13 and Clause 21 of the SREP (Sydney Harbour Catchment) 2005.

2 Aims of plan

(1) *This plan has the following aims with respect to the Sydney Harbour Catchment—*

(a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—

(i) as an outstanding natural asset, and

(ii) as a public asset of national and heritage significance,

for existing and future generations,

(b) to ensure a healthy, sustainable environment on land and water,

(c) to achieve a high quality and ecologically sustainable urban environment,

(d) to ensure a prosperous working harbour and an effective transport corridor,

(e) to encourage a culturally rich and vibrant place for people,

(f) to ensure accessibility to and along Sydney Harbour and its foreshores,

(g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,

(h) to provide a consolidated, simplified and updated legislative framework for future planning.

Comment:

The site is located approximately 370m to the north of the nearby foreshore area. As such, the proposed development will not unreasonably detract from the cultural, ecological or commercial values of the Sydney Harbour.

13 Sydney Harbour Catchment

The planning principles for land within the Sydney Harbour Catchment are as follows—

(a) development is to protect and, where practicable, improve the hydrological, ecological and geomorphological processes on which the health of the catchment depends,

(b) the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,

(c) decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,

(d) action is to be taken to achieve the targets set out in Water Quality and River Flow Interim Environmental Objectives: Guidelines for Water Management: Sydney Harbour and Parramatta River Catchment (published in October 1999 by the

Environment Protection Authority), such action to be consistent with the guidelines set out in Australian Water Quality Guidelines for Fresh and Marine Waters (published in November 2000 by the Australian and New Zealand Environment and Conservation Council),

(e) development in the Sydney Harbour Catchment is to protect the functioning of natural drainage systems on floodplains and comply with the guidelines set out in the document titled Floodplain Development Manual 2005 (published in April 2005 by the Department),

(f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,

(g) the number of publicly accessible vantage points for viewing Sydney Harbour should be increased,

(h) development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water,

(i) action is to be taken to achieve the objectives and targets set out in the Sydney Harbour Catchment Blueprint, as published in February 2003 by the then Department of Land and Water Conservation,

(j) development is to protect and, if practicable, rehabilitate watercourses, wetlands, riparian corridors, remnant native vegetation and ecological connectivity within the catchment,

(k) development is to protect and, if practicable, rehabilitate land from current and future urban salinity processes, and prevent or restore land degradation and reduced water quality resulting from urban salinity,

(l) development is to avoid or minimise disturbance of acid sulfate soils in accordance with the Acid Sulfate Soil Manual, as published in 1988 by the Acid Sulfate Soils Management Advisory Committee.

Comment:

The proposed development is not visible from the foreshore area. Consequently, the development will have no unreasonable visual impacts on the waterways and foreshore area. No excavation works area required to facilitate the proposal. As such, the development will not lower the water table on the subject site or adjacent Class 1, 2, 3 or 4 land.

21 Biodiversity, ecology and environment protection

The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows—

(a) development should have a neutral or beneficial effect on the quality of water entering the waterways,

(b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),

(c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),

(d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,

(e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,

(f) development should retain, rehabilitate and restore riparian land,

(g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,

(h) the cumulative environmental impact of development,

(i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.

Comment:

Given the minor nature of the works and the proximity of the site in relation to the foreshore area, it is not anticipated that sediments will migrate to the foreshore area. Therefore, the proposed development will not unreasonably impact the waterway and aquatic vegetation.

Having regard to the above assessment, the proposal is considered to be consistent with the relevant provisions entailed within the SREP (Sydney Harbour Catchment) 2005. Given the minor scale of the proposed works, the proposal was not referred to the Foreshore and Waterways Planning and Development Advisory Committee.

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	2.2m	2.2m	-	Yes
Floor Space Ratio	FSR: 0.6:1	No change to existing FSR	No change to existing FSR	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.12 Essential services	Yes

Detailed Assessment

5.10 Heritage conservation

The modified proposal comprises deleting a condition and has no impact on the heritage significance of Heritage Item No. I217 'St Andrew's Hall and manse'.

6.1 Acid sulfate soils

The modified proposal comprises deleting a condition and has no potential impacts with respect to acid sulfate soils.

Manly Development Control Plan

Built Form Controls

There are no applicable built form controls for the proposed works.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes

Detailed Assessment

3.2 Heritage Considerations

The modified proposal comprises deleting a condition and has no impact on the heritage significance of Heritage Item No. I217 'St Andrew's Hall and manse'.

4.1.10 Fencing

The height of the approved masonry fence/retaining wall structure ranges between 1.68m and 2.2m in height, which exceeds the 1m requirement. In assessing this Section 4.55(1A) Modification, it is noted that the height of the approved structure under DA2020/0121 will remain unchanged. Therefore, no

further comment in this regard is required for the purposes of this modified proposal.

4.4.5 Earthworks (Excavation and Filling)

The height of the approved masonry fence/retaining wall structure ranges between 1.68m and 2.2m in height, which exceeds the 1m requirement. In assessing this Section 4.55(1A) Modification, it is noted that the height of the approved structure under DA2020/0121 will remain unchanged. Therefore, no further comment in this regard is required for the purposes of this modified proposal.

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. Mod2020/0188 for Modification of Development Consent DA2020/0121 granted for reconstruction of front boundary wall on land at Lot 2 DP 1134642,1 Kangaroo 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
220121/A3 Issue A - Part Site Plan	24 January 2020	DW Knox & Partners

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 5 "All works within Property Boundaries"

The applicant is to ensure that all works are located wholly within the property boundaries.

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

Signed



Thomas Burns, Planner

The application is determined on 17/06/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments