

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0510
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 141 DP 11162, 39 Prince Edward Road SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2020/1201 granted for Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Susan Jane McCall
Applicant:	Susan Jane McCall

Application Lodged:	13/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	28/09/2022 to 12/10/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted under Development DA2020/1201 on 23 November 2020 for alterations and additions to a dwelling house. This consent was subsequently modified on 8 October 2021 under Section 4.55(2) Modification Application Mod2021/0682.

This application has been made pursuant to Section 4.55(1A) of the EP&A Act 1979 seeking to amend the approved development as follows:

Lower Ground Floor

- Remove the approved internal staircase from the ground floor to the garage level.
- Remove the approved hallway and retain the existing structure.
- Retain the existing south facing window in the garage.

Ground Floor

- Remove the approved new covered entry porch.
- Remove approved kitchen window (W01) and retain existing window (north facing).

First Floor

- No changes proposed.

Roof

- Remove the existing roof tiles and replace with metal roof sheeting.

Note: The site inspection revealed that the changes to the roofing material have already been undertaken. Council has no power to retrospectively approve unauthorised works. Hence, a condition is recommended to exclude this element from the consent. It is noted that changes to the roof cladding may be permissible as exempt development under Subdivision 27 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

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

Property Description:	Lot 141 DP 11162 , 39 Prince Edward Road SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Prince Edward Road, Seaforth.</p> <p>The site is rectangular in shape with a frontage of 12.19m along Prince Edward Road and a depth of 42.67m. The site has a surveyed area of 518.15sqm.</p>

The site is located within the R2 Low Density Residential zone pursuant to MLEP 2013 and accommodates a part-2 part-3 storey dwelling house.

The landscape character of the site is a typical suburban garden with gardens, boundary hedging and a lawn area within the rear yard. The site does not contain any threatened species.

The site experiences a fall of approximately 4m that slopes away from the north-western front corner towards the south-eastern rear corner.

The site is not constrained by any restrictive covenants or natural constraints.

Description of Surrounding Development

The surrounding built environment is characterised by detached low density residential development.

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following history:

- Development Application No. 366/06 for alterations and additions to an existing two (2) storey dwelling approved by Council on 23 November 2006.
- Development Application DA2020/1201 for alterations and additions to a dwelling house approved by Council on 23 November 2020.

- Section 4.55(2) Modification Application Mod2021/0682 for Modification of Development Consent DA2022/1201 approved by Council on 8 October 2021.

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 DA2020/1201, 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 development reduces the FSR of the development. • The modified development does not increase the height or footprint of the dwelling house.
(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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2020/1201 for the following reasons:</p> <ul style="list-style-type: none"> • The modified development does not have a materially different impact when compared

Section 4.55(1A) - Other Modifications	Comments
	<p>to the approved development.</p> <ul style="list-style-type: none"> The modified development does not alter the approved land use.
<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 development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>No submissions were received in relation to this application.</p>

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
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 2013 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 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 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>

Section 4.15 'Matters for Consideration'	Comments
	Clause 69 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.
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 from 28/09/2022 to 12/10/2022 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 (Development	The modification proposed the internal changes into the building.

Internal Referral Body	Comments
Engineering)	No impact to the on site stormwater management and vehicular access. Development Engineering has no objection to the application. No additional engineering condition is required.

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 (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application (see Certificate No. A373780_04, dated 22 July 2022). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (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

Standard	Requirement	Approved	Proposed	% Variation	Complies

Height of Buildings:	8.5m	7.79m	no change to building height	-	Yes
Floor Space Ratio	0.45:1	0.35:1 (184.4sqm)	0.349:1 (181sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 518.5sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 500sqm of site	1 dwelling on 518.5sqm site	1 dwelling on 518.5sqm site	Yes
	Dwelling Size: minimum GFA of 107sqm	184.4sqm GFA	181sqm GFA	Yes
4.1.2.1 Wall Height	North: 7.2m (based on gradient 1:9)	no change to wall height	no change to wall height	N/A
	South: 6.9m (based on gradient 1:15)	no change to wall height	no change to wall height	N/A
4.1.2.2 Number of Storeys	2 storeys	part-2 part-3 (existing noncompliance that is unchanged)	part-2 part-3 (existing noncompliance that is unchanged)	N/A
4.1.2.3 Roof Height	Height: 2.5m	no change to roof height	no change to roof height	N/A
	Pitch: maximum 35 degrees	covered balcony roof pitch less than 35 degrees	covered balcony roof pitch less than 35 degrees	Yes
4.1.4.1 Street Front Setbacks	6m	8.93m (entryway to dwelling)	8.93m (entryway to dwelling)	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.48m (1/3 of max. wall height)	0.96m	0.96m	No - however no further noncompliance
	South: 2.75m	1.02m	1.02m	No - however no

	(1/3 of max. wall height)			further noncompliance
	Windows: 3m	1 window within 3m of side boundary	1 window within 3m of side boundary deleted - hence no new windows within 3m of side boundaries	Yes
4.1.4.4 Rear Setbacks	8m	13.61m	13.61m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (286.08sqm) of site area	62.03% (321.6sqm)	62.03% (321.6sqm)	Yes
	Open space above ground 25% of total open space	< 25%	< 25%	
4.1.5.2 Landscaped Area	Landscaped area 35% (112.56sqm) of open space	80.54% (259sqm)	80.54% (259sqm)	Yes
	3 native trees	3 trees conditioned	3 trees conditioned	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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

Whilst numerically non-compliant with the side setback requirements, the modified development does not exacerbate the approved non-compliant side building lines along the northern and southern side elevations. During the assessment of Development Application DA2020/1201 the numeric non-compliances were supported on merit due to consistency with the objectives of the control. Given these approved setbacks are maintained, no further consideration of this control is required for the purpose of this assessment.

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. Mod2022/0510 for Modification of Development Consent DA2020/1201 granted for Alterations and additions to a dwelling house on land at Lot 141 DP 11162,39 Prince Edward Road, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1B. 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
S4.55-03 (Revision A) - Site/Roof/Sediment Erosion/Waste Management/Stormwater Concept Plan	25 July 2022	Action Plans
S4.55-07 (Revision A) - Proposed Garage Floor Plan	25 July 2022	Action Plans
S4.55-08 (Revision A) - Proposed Ground Floor	25 July 2022	Action Plans

Plan		
S4.55-09 (Revision A) - Proposed First Floor Plan	25 July 2022	Action Plans
S4.55-10 (Revision A) - North/East Elevation	25 July 2022	Action Plans
S4.55-11 (Revision A) - South/West Elevation	25 July 2022	Action Plans
S4.55-12 (Revision A) - Long/Cross Section	25 July 2022	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A373780_04	22 July 2022	Action Plans

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.

4A. No consent granted for new metal roof sheeting

No consent is granted for the new metal roof sheeting.

Reason: A development application or modification application cannot retrospectively grant consent for works that have been carried out without development consent.

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

Signed



Thomas Burns, Planner

The application is determined on 18/10/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager