

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0136
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 1 DP 998658, 27 Kangaroo Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2018/1931 granted for alterations and additions to a dwelling house and swimming pool
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:	Ian Alfred Burgess Melissa Burgess
Applicant:	Belinda Walter

Application Lodged:	14/04/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/04/2020 to 12/05/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to make minor amendments to the previously approved development application DA2018/1931 for the alterations and additions to a dwelling house and swimming pool.

The minor amendments as part of this application are as follows:

- Amendment to the size of the to approved windows W4, W5, W6, W7, W15, W29, W39,
- Deletion of window W31 on the northern elevation,
- The inclusion of window W41 (frosted glass) on the southern elevation,
- Replacement of the existing front door (no change to size W40 above the door),
- Replacement of the existing concrete steps & slab adjacent to garage, and
- The inclusion of a third skylight serving the main bathroom.

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

SITE DESCRIPTION

Property Description:	Lot 1 DP 998658 , 27 Kangaroo Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site is is legally known as Lot 1 in DP 998658 and identified as No. 27 Kangaroo Street, Manly. The property is located within the R1 General Residential zone.</p> <p>The site is located on the western side of Kangaroo Street, and has a very steep rock outcrop within the Kangaroo Street frontage of the site.</p> <p>The site has an area of 514.9m² and is regular in shape. The property has two street frontages, with the primary street frontage to Kangaroo Street, and the secondary street frontage (rear) is to Augusta Lane. The subject sites front boundary to Kangaroo Street measures 12.19m, the secondary frontage to Augusta Lane measures 11.7m and the northern and southern boundaries measure 33.56m and 33.51m respectively.</p> <p>The site currently contains a two storey dwelling house, detached garage fronting Augusta Lane and inground swimming pool.</p>

Surrounding sites consist of two storey dwelling houses and multi-storey residential flat buildings, of varying ages, within landscaped settings.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant development applications for the property:

- Development Application **10.2003.370.1** to demolish the existing garage and construct a new larger brick and timber garage was approved by Council on the 24 December 2003.
- Development Application **DA2018/1931** for the alterations and additions to a dwelling house and swimming pool was approved by Council on the 17 April 2019.

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 DA2018/1931, 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 as the proposed modification largely relates to window changes and there are no changes proposed to the overall built form of the approved development.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1931 for the following reasons:</p> <ul style="list-style-type: none"> • The amendments proposed are for minor changes to the approved windows, the front door and to the existing concrete stairs at the rear of the site. • The application makes no change to the previously approved building height or FSR for the dwelling house. The resultant development is considered to be generally the same appearance as their is no change to the built form controls. The modified proposal will not result in any unreasonable effects to the natural environment or to the amenity or the area when compared to that approved under DA2018/1931. <p>As such, it is recommended that the consent authority be satisfied that the modifications are substantially the same development as the development for which consent was originally granted.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for</p>	<p>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.</p>

Section 4.55(1A) - Other Modifications	Comments
modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)(iiia) – 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. 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 matter has been addressed via a condition in the original</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>consent.</p> <p>Clauses 93 and/or 94 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>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p>Clause 98 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 (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 of the application Council received no submissions.

REFERRALS

No referrals were sent in relation to this application

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. A331464_05 dated 2 April 2020). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A331464_05 dated 2 April 2020).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	50	Pass

This certificate is a revision of certificate number A331464 lodged with Development Application DA2018/1931.

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.35m	No change	-	Yes
Floor Space Ratio	FSR: 0.6:1	FSR: 0.53:1 (273.45sqm)	No change	-	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
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

No change to the built form controls as part of the modified works.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	No	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of Non-compliance

The proposed amendments includes changes to the windows on the northern and southern elevations, which are located 1.29m and 1.335m respectively from the side boundaries.

There are also proposed window changes to the front eastern and rear western elevations, however there is no additional privacy impacts to adjoining properties from these window areas.

Whilst the modification includes windows amendments on the northern and southern elevation that actually improve the privacy outcomes for the neighbouring sites, an assessment has been undertaken as these windows to ensure consistency with the objectives of the control.

Merit Consideration:

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

- ***To minimise loss of privacy to adjacent and nearby development by: appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.***

Comment:

The amended development includes the removal of one window, W31, from the First Floor of the northern elevation, and the replacement of an existing Ground Floor window, W15, with the same dimensions. Therefore, the potential for overlooking from the subject property to the northern adjoining property has been reduced by the removal of the First Floor W31 window, and potential privacy impacts improved. The replacement window, W15, will continue to be screened by appropriate boundary fencing.

There is the addition of one window, W41, and the enlargement of one louvered window, W6, on the Ground Floor of the southern elevation. The amended design has included privacy mitigation measures to window W41 via frosted glazing. As a result the frosted glazing, and screening via appropriate boundary fencing, will ensure there are no additional privacy impacts to the southern adjoining site. Window, W6, has been increased in size. However, the additional glazing is 0.9m in height measured from the finished floor level. As a result the location of the additional glazing and screening via appropriate boundary fencing, it is not anticipated that there will be any additional privacy impacts to the southern adjoining property.

As such, the proposed window amendments are designed for privacy, and ensures mitigation of direct viewing between properties.

- ***To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.***

Comment:

The proposed amendments includes windows to allow for greater access to light and air without resulting in unreasonable privacy outcomes, and while retaining suitable outlooks and views.

- ***To encourage awareness of neighbourhood security.***

Comment:

The development proposes sufficient windows and open balcony areas to allow passive surveillance and encouraging awareness of neighbourhood security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / 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. Mod2020/0136 for Modification of Development Consent DA2018/1931 granted for alterations and additions to a dwelling house and swimming pool on land at Lot 1 DP 998658, 27 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 plans and documents listed in the "Notice of Determination" on 18 April 2019 in relation to DA2018/1931 as modified by plans and documents listed with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site and Roof Plan A-001	28/03/2020	BW
Ground Floor Plan A-100	28/03/2020	BW
First Floor Plan A-101	28/03/2020	BW
East Elevation A-200	28/03/2020	BW
North Elevation A-202	28/03/2020	BW
South Elevation A-203	28/03/2020	BW
Section A-300	28/03/2020	BW

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



Catriona Shirley, Planner

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



Rodney Piggott, Manager Development Assessments