

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0249
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 21 DP 735841, 23 Kangaroo Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2021/2045 granted for Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Jennifer Anne Barr
Applicant:	Virginia Kerridge Pty. Ltd.

Application Lodged:	10/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/05/2023 to 01/06/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55 (1A) Modification Application seeks to amend Development Consent No. DA2021/2045, in the following ways:

- Several window/door amendments and additions;
- Internal amendment to studio to enlarge bathroom (FSR to remain the same);
- Change internal balustrade to be of a metal material rather than timber; and
- Roof from to be amended from pitched to flat, with overall building height reduced to RL 38.42.

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
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 21 DP 735841 , 23 Kangaroo Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Kangaroo Street, Manly,</p> <p>The subject site is legally identified as Lot 21, in Deposited Plan 735841, No. 23 Kangaroo Street, Manly.</p> <p>The site is regular in shape with a street frontage of 12.2m and a depth of 43.04m. The site has a surveyed area of 524m². Vehicular access to the site is obtained via Augusta Lane.</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey residential dwelling with a detached garage.</p> <p>The site has an easterly orientation towards Kangaroo Street. The site is located on a slope of approximately 10.7m (24.3%) falling in the direction from the north western corner (Augusta Lane) of the site towards the south eastern corner (Kangaroo Street).</p> <p>The site is heavily vegetated within the front setback (between the front building line and Kangaroo Street). Multiple canopy trees are located throughout the site.</p> <p>Detailed Description of Adjoining/Surrounding</p>

Development

Adjoining and surrounding development is characterised by one (1) and two (2) storey residential dwellings.

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:

DA2019/1415

Development Application for the demolition works and construction of a garage and studio.
Determined on 31 January 2020, by Delegated Authority.

DA2021/2045

Development Application for the alterations and additions to a dwelling house.
Determined on 25 January 2022, by Delegated Authority.

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 **DA2021/2045**, 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 works include internal amendments to the approved studio, changes to window/door designs and an additional balustrade of metal material rather than the approved timber. • The works include amending the roof form, reducing the height to RL 38.42 from RL 39.46. • No additional amenity impacts arise from this changes.
(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 DA2021/2045 for the following reasons:</p> <ul style="list-style-type: none"> • The works will not significantly alter the approved setbacks, floor space ratio or landscaping of the proposal. But rather consist of minor aesthetic amendments. • The footprint of the development will remain generally the same as approved.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, 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</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>

Section 4.55(1A) - Other Modifications	Comments
applications for 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.	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	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 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>development). This clause is not relevant to this application.</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> <p><u>Clause 69</u> 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.</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	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/05/2023 to 01/06/2023 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

No referrals were sent in relation to this application

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. A436423_02 dated 4 May 2023).

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	5.9m RL 39.46	4.0m RL 38.42	-	Yes
Floor Space Ratio	FSR: 0.6:1 (314.4m ²)	FSR: 0.28:1 (146.72m ²)	No Change	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
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

Built Form Controls - Site Area: 542.0m	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 6.5m (based on gradient 0))	2.6m	3.6m	Yes
	E: 6.2m (based on gradient 0)	4.5m	4.4m	Yes
	S: 7.5m (based on gradient 1:6)	3.9m	4.9m	Yes
	W: 6.6m (based on gradient 1:60)	2.7m	3.2m	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.9m	0.2m	Yes
	Parapet Height: 0.6m	0.2m	No Change	Yes
	Pitch: maximum 35 degrees	33 degrees (garage) 39 degrees (studio)	< 35 degrees	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No changes to primary frontage	No Change	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North :0.86m South: 1.3m (based on wall height)	1.3m (studio) 0.1m	1.4m (studio) No Change	Yes
	Windows: 3.0m	1.3m (minimum)*	1.4m	No
	Secondary street	0.6m,	Nil, consistent	Yes

	frontage: Prevailing setback	consistent with prevailing setback**	with prevailing setback	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	52% or 256.6m ²	No Change	As previously approved.
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	75% or 194m ²	No Change	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	No Change	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	49.0% or 6.0m	No Change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No Change	Yes

*The assessment report for DA2021/2045 indicated that the window setback was proposed at 1.8m to the northern boundary line. After reviewing the Stamped Plans of DA2021/2045, the minimum window setback was approved at 1.3m.

** The assessment report for DA2021/2045 indicated that the secondary front setback was proposed at 0.6m to the western boundary line. After reviewing the Stamped Plans of DA2021/2045, the proposed secondary front setback was actually nil - 0.1m. This is found to be consistent with the prevailing building line, and will not change under this modification application.

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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	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
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	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Storeys & Roof Height)		
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	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	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

Merit Consideration

Clause 4.1.4.2 Side setbacks and secondary street frontages stipulates that for secondary street frontages, the side boundary setback control will apply unless a prevailing building line exists. An existing building line of approx. nil -0.1m exists on Augusta Lane. The proposed development complies with this requirement, however, was miscalculated under DA2021/2045. In addition, a side setback of 0.1m to the south was approved under DA2021/2045, this setback will remain unchanged under this application.

Under the above mentioned clause, the requirements for all new windows that face the side boundary are to be setback at least 3.0m. Window WG-04 was approved with a side setback to the northern boundary of 1.3m. The proposed modification indicates that this setback has increased to 1.4m. As the variation to the requirement has not increased, but rather reduced, no further assessment is required.

4.1.5 Open Space and Landscaping

Merit Consideration

Clause 4.1.5 Open Space and Landscaping, requires at least 55.0% of the site area to consist of total open space.

The modified development does not reduce the non-compliant total open space of 52.0%, approved under DA2021/2045. Given that there is no further reduction, the previously approved non-compliance is supported on merit. 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. Mod2023/0249 for Modification of Development Consent DA2021/2045 granted for Alterations and additions to a dwelling house on land at Lot 21 DP 735841,23 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
S4.55 100, Proposed Site Plan, Revision A	28 April 2023	Virginia Kerridge Architect
S4.55 110, Proposed Lower Ground Floor Plan, Revision A	28 April 2023	Virginia Kerridge Architect
S4.55 120, Proposed Ground Floor Plan, Revision A	28 April 2023	Virginia Kerridge Architect
S4.55 130, Proposed Roof Plan, Revision A	28 April 2023	Virginia Kerridge Architect
S4.55 200, Proposed Elevations, Revision A	28 April 2023	Virginia Kerridge Architect
S4.55 300, Proposed Sections, Revision A	28 April 2023	Virginia Kerridge Architect

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (No. A436423_02)	4 May 2023	Virginia Kerridge Architect

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

c) 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



Brittany Harrison, Planner

The application is determined on 02/06/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments