

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0157
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 18 DP 11828, 6 Wattle Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA6/2016 granted for Alterations and additions to an existing dwelling house including new swimming pool new rear deck new retaining wall new windows and landscaping.
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jeffrey Christopher Law Stephanie Law
Applicant:	Lauren Elizabeth Pevy

Application Lodged:	12/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/04/2021 to 04/05/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

This report has been submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Section 4.55(2) Modification Mod2021/0157, which seeks to modify Development Consent DA0006/2016, specifically involving works to the basement level of the existing dwelling house, including increasing the floor space of the storeroom, as well as a laundry and bathroom.

The proposed works will not alter the existing building height and are sited below the 8.5m statutory height limit. Furthermore, the modified works provide an additional 33.1sqm of gross floor area, which increases the approved FSR from 0.33:1 to 0.4:1. This FSR still complies with the 0.6:1 statutory control.

The proposed modified works result in a minor numerical non-compliance to control 4.1.4.2 Side

setbacks and secondary street frontages of MDCP. Notwithstanding the numerical non-compliance, this report will outline that this will not give rise to any unreasonable amenity or environmental impacts.

This application was notified between 20 April 2021 and 4 May 2021. During this period no submissions were received.

This application is referred to the Development Determination Panel (DDP) for review and determination due to the application being a Section 4.55(2) Other Modifications and the previous Development Application (DA0006/2016) being reviewed and determined by Manly's Development Assessment Unity (DAU).

As such, based on the detailed assessment contained within this report, it is recommended that the application be **approved**.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 9 March 2016 under Development Consent DA0006/2016 for alterations and additions to an existing dwelling house including new swimming pool, new rear deck, new retaining wall, new windows and landscaping.

This Section 4.55(2) Modification has been submitted to Council seeking to make the following amendments to the approved development:

- Extend basement towards rear boundary by 2.4m.
- Internal alterations to basement level to provide a bathroom and laundry.
- New bifold doors on rear elevation (north) to lower ground floor.
- New sliding doors on rear elevation on ground floor.

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

SITE DESCRIPTION

Property Description:	Lot 18 DP 11828 , 6 Wattle Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Wattle Avenue. The site is irregular in shape with a splayed frontage of 12.51m along Wattle Avenue and an average depth of 36.5m. The site has a surveyed area of 453.2m². The site is located within the R1 General Residential zone and accommodates a two storey residential dwelling within a landscaped setting, vehicular access is gained via an existing driveway from Wattle Avenue to an existing detached single vehicle carport. The site has a southerly orientation and is located on a slope of approximately 8m, falling from the street frontage (south) to the rear of the property (north). The site is not known to have an significant or threatened flora or fauna species. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one and two storey residential dwellings within landscaped settings.

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:

19 January 2016

A Development Application (DA0006/2016) was submitted to Manly Council seeking consent for alterations and additions to an existing residential dwelling including the construction of a swimming pool, rear deck, retaining walls, new windows and additional landscaping treatments. This application was approved by Manly's Development Assessment Unit (DAU) on 6 March 2016.

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 DA0006/2016, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0006/2016 for the following reasons: The original development application sought consent for alterations and additions to a residential dwelling, including the construction of a new swimming pool, new rear deck, retaining walls, windows and landscaping treatments.

Section 4.55 (2) - Other Modifications	Comments
	This current modification application alterations to the residential dwelling including the extension of the existing storeroom on the basement level and the construction of a new laundry and bathroom on the same level. The approved land use remains unchanged and the material impacts of the modified development are consistent with the approved development. Council can be satisfied that the proposed modifications are substantially the same to that which was approved under DA6/2016.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA0006/2016 did not require concurrence from the relevant Minister, public authority or approval body.
(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 and Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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
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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 21 Development Control Plan 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 2000 (EP&A Regulation 2000)	<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. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <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. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> 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. <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. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building

Section 4.15 'Matters for Consideration'	Comments
	designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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 20/04/2021 to 04/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 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, 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. A409560 on 29 March 2021).

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	new works do not alter building height and are sited below 8.5m	new works do not alter building height and are sited below 8.5m	-	Yes
Floor Space Ratio	FSR:0.6:1 (271.92sqm GFA)	0.33:1 (147.6sqm GFA)	FSR: 0.4:1 (180.7sqm GFA)	-	Yes

Note: GFA refers to gross floor area.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 453.2sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm of site area	1 dwelling on 453.2sqm site	1 dwelling on 453.2sqm site	Yes
4.1.2.1 Wall Height	East: 7.7m	no change to wall height	no change to wall height	N/A
	West: 7.7m	no change to wall height	no change to wall height	N/A
4.1.2.2 Number of Storeys	2 storeys	2-3 storeys	2-3 storeys	No, however no further non-compliance
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	works behind front building line and setback greater than 6m	works behind front building line and setback greater than 6m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.57m (1/3 of max. wall height)	no change	1.18m	No
	West: 2.67m (1/3 of max. wall height)	no change	2.68m	Yes
	Windows: no windows within 3m	no new windows	window W1 setback 1.18m from eastern side boundary	No
4.1.4.4 Rear Setbacks	8m	not specified	17.3m (extension to basement)	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	65.49% (296.787sqm)	60.9% (276sqm)	Yes
	Open space above ground 25% of total open space	6.2% (17.1sqm)	6.2% (17.1sqm)	
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	53% of total open space (159.07sqm) - based off approved TOS	57.63% (159.07sqm) - no change to landscaping, however percentage increased	Yes

			due to decrease in TOS	
	1 native trees	1 trees	1 tree	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	> 18sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.1m	1.3m - no change	No, however variation supported under original consent
	1m curtilage/1.5m water side/rear setback	1.1m curtilage/3.3m water line	1.1m curtilage/3.3m water line - no change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	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 Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

Description of non-compliance

This control requires side setback distances to be one third of the wall height. The wall height remains unchanged at 7.7m. As such, the eastern side setback requirement is 2.57m. The proposed alterations to the ground level includes a minor extension to the eastern elevation which results in a numerically non-compliant eastern side setback of 1.18m.

This control also requires any new windows to be 3.0m from side boundaries. The proposal includes the installation of a small window to the existing storage space along the eastern elevation - this window is within 3.0m of the eastern side boundary and, therefore, does not comply with this requirement.

Merit consideration:

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

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

Comment:

The proposed extension to the basement level will not be in view of the existing streetscape. As such, the proposed modified works will not impact upon the aesthetics of the existing streetscape, including the spatial proportions and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The eastern side boundary is represented by an existing timber lapped and capped fence which is situated on top of a retaining wall, existing and dense vegetation is also located along this side boundary. In this instance, the numerical non-compliance to the eastern side boundary, including the installation of W1, will not give rise to any unreasonable amenity impacts upon the occupants of the subject site and those of the adjoining property, being 4 Wattle Avenue.

The proposed modified works do not include any changes to the traffic conditions of the subject site or Wattle Avenue, nor will it impact upon the character of the existing streetscape.

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

Comment:

The flexibility of the site is not impacted as a result of the proposed modified works as the non-compliant eastern side setback will not give rise to any unreasonable amenity impacts upon the adjoining property.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native*

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

Comment:

The proposed modified works are generally located over the existing building footprint and any existing vegetation or natural features will not be impacted as a result of the non-compliant eastern side setback.

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

Comment:

The subject site is not located within Northern Beaches Bush Fire Prone Land Map 2020.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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 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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

In summary, a detailed assessment has been required for the following specific issue relating to a numerical non-compliance with the following Manly DCP:

- Control 4.1.4.2 Side setbacks and secondary street frontages.

This numerical non-compliance has been addressed within this report. As outlined in the report, this non-compliance is considered to result in minimal material impact upon adjoining or nearby properties. Additionally, the non-compliance is considered reasonable when assessed against the relevant objectives of the control.

The proposed modified works are, therefore, recommended for **approval**.

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. Mod2021/0157 for Modification of Development Consent DA6/2016 granted for Alterations and additions to an existing dwelling house including new swimming pool new rear deck new retaining wall new windows and landscaping. on land at Lot 18 DP 11828,6 Wattle Avenue, FAIRLIGHT, 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

A3 21.01 Proposed Basement	29/3/21	Canopy Design
A3 21.02 Proposed Ground Floor Plan	29/3/21	Canopy Design
A3 11.01 Site Plan and Analysis	29/3/21	Canopy Design
A3 30.01 Elevations	29/3/21	Canopy Design
A3 40.01 Sections	29/3/21	Canopy Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate A409560	29 March 2021	Lauren Pevy

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No.	Dated	Prepared By
A3 60.01 Waste Management Plan	29/3/21	Canopy Designs

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition 45. Use of Premises to read as follows:

The proposed basement level must not operate as a separate occupancy to the rest of the dwelling house. No cooking facilities are permitted to be installed on the basement level.

Reason: To ensure the low-density residential nature of the locality and not to be used as a separate occupancy.