

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0702
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 11 DP 1216827, 49 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent 2018/0880 granted for the construction of a dwelling house and a secondary dwelling
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:	James Dempsey Manion Maureen Adele Manion
Applicant:	Group Architects

Application Lodged:	13/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify the existing consent for the approved construction of a dwelling house and secondary dwelling.

The modification involves the addition to the consent that there will be a manufactured dwelling with approval under Section 68 of the Local Government Act (2005). The proposal therefore seeks to have a condition added which requires a Section 68 approval to be issued for the manufactured home.

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 11 DP 1216827 , 49 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of an allotment located on the southern side of Lauderdale Avenue. The site is an irregular in shape with a frontage of 8.805m along Lauderdale Avenue and an approximate depth of 40m. The site has a surveyed area of 460.1m². The site is located within the R1 General Residential zone and accommodates a dwelling house on site. It is also noted that Council's mapping indicates part of the site (to the south-west) to be within the E4 Environmental Living zone. The site slopes from the front at Lauderdale Avenue down to the rear toward the foreshore. This slope involves approximately a 14 metre fall from the front to the rear. Additionally, there is a steep drop from a stone retaining wall toward the rear of this site, being approximately 10 metres from the top of the wall to the rear of the site. This splits the site into two with each side being at separate level. The site has vegetation at each level including a variety of tree species. Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development on each side of Lauderdale Avenue.

Map:



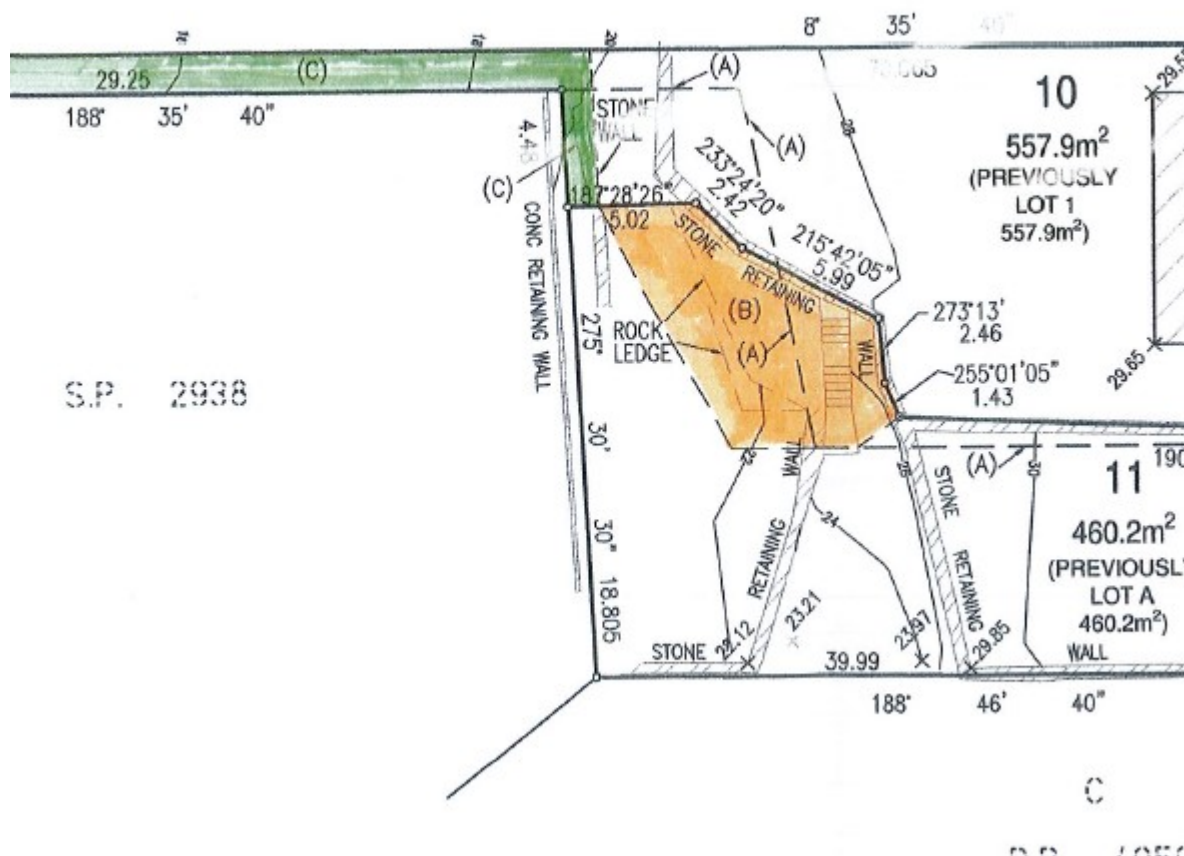
SITE HISTORY

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:

- Subdivision DA- DA77/2015- Boundary realignment of the existing two lots with new easements.

It is noted that this re-alignment involved the change of the boundary to be partially aligned with a stone retaining wall as below:

S.P. 14843



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration'	Comments
of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of 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 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	(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	The application was not notified (in accordance with the Community Participation Plan), and no submissions were received in regard to the application.
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.

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 DA2018/0880 and MOD2019/0378, 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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: The proposal does not involve any change to the built form or the use of the site. As such, the change for there to be a manufactured dwelling would have minimal environmental impact (subject to approval under the Local Government Act).
(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	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 DA2018/0880 and MOD2019/0378 for the following reasons: The proposal does not involve any change to the bulk of the building and does not intensify the use of the of the building. This means that the visual presentation and environmental impact of the proposal will not be significantly altered. As such, the proposal is essentially and materially the same development as the original consent.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan and Manly Development Control 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.	No submissions were received in relation to this application.

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 was not notified.

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. 922640M_02).

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

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	50

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

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

A request has been made to modify condition number 20 which relates to a privacy screen. There is no change to the dimensions or location of the privacy screen. Instead, the modification involves modifying the condition so that details are provided for the screen during the Section 68 approval. This will ensure that the privacy screen is installed so that privacy loss can be appropriately minimised.

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
- 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. Mod2020/0702 for Modification of Development Consent 2018/0880 granted for the construction of a dwelling house and a secondary dwelling on land at Lot 11 DP 1216827,49 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

A. Add of Deferred Commencement Condition 5 and subsequent Modification of Development Description to be as follows:

A Section 68 approval for a manufactured home is to be **acquired** prior to the operation of the consent in accordance with the modification.

Once a Section 68 consent is received, the development description is to be changed to "Installation of a manufactured Dwelling House and construction of a Secondary Dwelling".

Reason: To Ensure the appropriate approval pathway and development description

B. Modify Condition 20 - Privacy Screen to read as follows:

Privacy screens are to be provided to the extent of the eastern and western elevations of the 'suspended deck at Level 1'. These screens are to be 1.8 metres in height and have no individual opening greater than 30 millimeters and a total area of all openings that is no more than 30 per cent of the surface area of the screen. Details demonstrating compliance are to be submitted to the Certifying Authority as a part of the Section 68 approval process.

Reason: To minimise privacy loss between properties.

C. Delete Condition 38 - Change of Use to read as follows:

A person must not commence occupation or use (or change of use where an existing building) of the whole or any part of a building (within the meaning of section 109H (4) of the Act) unless an Interim Occupation Certificate or Final Occupation Certificate has been issued in relation to the building or part.

The Principal Certifying Authority is required to be satisfied, amongst other things, that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed use.

Note: The obligation to comply with the category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.

Reason: Statutory requirement under S109N of the Environmental Planning & Assessment Act 1979.

Reason: The previous modification MOD2019/0378 involved a fire resistant wall to separate the dwelling. This means the building is no longer a "Class 2 Building" and the above requirements are invalid.

D. Delete Condition 42 - Fire Safety Matters to read as follows:

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

Reason: The previous modification MOD2019/0378 involved a fire resistant wall to separate the dwelling. This means the building is no longer a "Class 2 Building" and the above requirements are invalid.

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

Signed



Thomas Prosser, Planner

The application is determined on 05/02/2021, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments