

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0648
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 4 DP 12177, 2 Alma Street CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA2020/1137 granted for alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Brad Malcolm Spence
Applicant:	Jaclyn Smith Architectural Design

Application Lodged:	26/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/09/2021 to 17/09/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted under DA2020/1137 for alterations and additions to a dwelling house. The consent was issued on 11 December 2020.

This Section 4.55(1A) Modification has been submitted to Council seeking to make the following amendments to the approved development:

- Increase the boundary fencing from 1.5m in height to a maximum height of 2.18m.
- Modifications to the design of the fence.

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 - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 4 DP 12177 , 2 Alma Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) corner allotment located on the northern side of Alma Street and western side of Woodland Street. The site is irregular in shape with a primary frontage of 15.09m along Alma Street and a secondary frontage of 43.28m along Woodland Street. The site has a surveyed area of 596.1m² and is burdened by a stormwater easement that traverses through the south-eastern corner of the allotment. The site is located within the R2 Low Density Residential zone and accommodates two-storey dwelling with a swimming pool. The site falls approximately 5.5m from the north boundary towards the south. The site contains trees and vegetation along parts of the Woodland Street frontage and a large grassed area on the southern side of the dwelling. Description of Surrounding Development Adjoining and surrounding development is characterised by

low density residential dwellings, generally with ancillary structures and outbuildings.

Map:



SITE HISTORY

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

- Development Application DA0061/1999 for construction of a new deck was approved on 14 April 1999 by Council staff under delegated authority.
- Development Application DA2020/1137 for alterations and additions to a dwelling house was approved on 11 December 2020 by Council staff under delegated authority.
- Construction Certificate CC2021/0671 issued by a Private Certifier for the works approved under Development Application DA2020/1137.

APPLICATION HISTORY

The Assessment Officer examined the subject site and the surrounds on 13 September 2021.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;

- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1137, 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 fence, as amended via condition, will not have an unreasonable visual impact upon the streetscape. • The fence will not result in unreasonable amenity impacts.
(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 DA2020/1137 for the following reasons: • The modified development, as amended via condition, will not have a materially different impact when compared to the approved development. • The modified development does not alter the land use on the site.
(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 the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within	No submissions were received in relation to this application.

Section 4.55(1A) - Other Modifications	Comments
any period prescribed by the regulations or provided by the development control plan, as the case may be.	

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 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 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 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.
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 2013 section in this report. (ii) Social Impact

Section 4.15 'Matters for Consideration'	Comments
	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	No submissions were received in relation to this 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.

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 03/09/2021 to 17/09/2021 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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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

N/A - There are no changes to the approved maximum building height and floor space ratio for the dwelling house.

Compliance Assessment

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.9 Foreshore scenic protection area	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
4.1.10 Fencing	1m solid / 1.5 with transparency	1.33m	2.18m	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	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
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Refer to detailed discussion within the section of this report relating to Clause 4.1.10 of the Manly DCP 2013.

4.1.10 Fencing

Description of non-compliance

Clause 4.1.10 of the MDCP 2013 limits the height of solid fences/walls to 1m above natural ground level. Furthermore, the control states that fences can be increased to 1.5m, provided the area above 1m is at least 30% transparent.

This modified development involves increasing the approved boundary fencing height from 1.5m in height to 2.18m, which does not satisfy the numeric requirement.

Merit consideration

With regard to the consideration of a variation, the proposal is considered against the underlying objectives of the control. The control relies upon the objectives specified within the Manly DCP 2013 streetscape provision.

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The 2.18m high fence is inconsistent with the existing streetscape character and does not satisfy the requirements outlined within the Manly DCP 2013. The height of the fence, coupled with the fact that the transparent elements are minimal, will have an unreasonable visual impact upon the streetscape. Notwithstanding, Council acknowledged that whilst the fencing fronts Alma Street and Woodland Street, the subject site contains a rear yard that fronts both streets due the site being a corner allotment. The rear yard serves as private open space for the occupants of the dwelling house on the subject site and

there is a reasonable expectation that visual privacy will be maintained within this area. To ensure a more balanced outcome for the streetscape that is considerate of the need to conserve privacy, a suitable condition has been included with this consent requiring the fence to be lowered to a maximum height of 1.8m above natural ground level. Subject to compliance with this condition, the visual impact upon the streetscape will be acceptable.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

The proposed fence, as amended via condition, will complement the identified streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The fence, as amended via condition, will maintain an appropriate visual relationship with the surrounding built environment.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control will be achieved, subject to the condition noted above.

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 2021

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. Mod2021/0648 for Modification of Development Consent DA2020/1137 granted for alterations and additions to a dwelling house on land at Lot 4 DP 12177,2 Alma Street, CLONTARF, 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
A.01.6 - Proposed Ground Floor	August 2021	Jaclyn Smith Architectural Design
A.02.2 - South and East Elevations	August 2021	Jaclyn Smith Architectural Design

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.

B. Add Condition 9A Amendments to Approved Plans

The following amendments are to be made to the approved plans:

- The boundary fencing fronting Alma Street and Woodland Street is to step down with the slope of the land and must be reduced to a maximum height of 1.8 metres above natural ground level on the street side of the fence.

Details demonstrating compliance must be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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

Signed



Thomas Burns, Planner

The application is determined on 22/09/2021, under the delegated authority of:



Claire Ryan, Acting Development Assessment Manager