

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0582
----------------------------	--------------

<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot 1 DP 900658, 7 Pavilion Street QUEENSCLIFF NSW 2096
<b>Proposed Development:</b>	Modification of Development Consent DA2018/1892 granted for demolition works and construction of a swimming pool
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	James David O'Leary Megan Oi Qwan Chan O'Leary
<b>Applicant:</b>	Nolan Planning Consultants

<b>Application Lodged:</b>	10/11/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	18/11/2020 to 02/12/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2018/1892 granted for demolition works and construction of a swimming pool. The modification involves the regularisation of an as-built 6.35m long portion of the pool fence that has been constructed inconsistently to the approved fence.

The modified fence alters the approved glazed pool fence to a 2.3m high (measured from existing ground level) framed glazed wall along the northeastern side of the pool curtilage, adjacent to the southeastern side boundary.

### 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

Warringah Development Control Plan - B13 Coastal Cliffs setback

Warringah Development Control Plan - E10 Landslip Risk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 900658 , 7 Pavilion Street QUEENSCLIFF NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northeastern side of Pavilion Street.</p> <p>The site is irregular in shape with an angled frontage of 17.33m along Pavilion Street and a depth of 43.18m along the northern boundary and 50.54m along the southern boundary. The site has a surveyed area of 910.4m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site falls by an average of 18% from west to east, before a sheer cliff into the water.</p> <p>The site has some planter boxes, shrubbed areas and a small garden area along the southern boundary.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by other dwelling houses with multiple different architectural styles.</p>

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:

Application **DA2010/1007** for Alterations & additions to a dwelling house was approved on 28/07/2010 by Council staff under delegated authority.

Application **DA2010/1194** for Alterations and additions to a dwelling house, construction of a swimming pool and new front fencing was approved on 12/10/2010 by Council staff under delegated authority.

Application **DA2018/0612** for Alterations and additions to a dwelling house was approved on 23/08/2018 by Council staff under delegated authority.

Application **DA2018/1892** for Demolition works and construction of a swimming pool was approved on 18/03/2019 by Council staff under 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 DA2018/1892, 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
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes</b></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"> <li>• The changes relate to an alteration of the design of a portion of the approved pool fence.</li> <li>• The approved use of the development will not be changed by the proposal.</li> <li>• The external appearance of the building will be largely unchanged by the proposed modifications.</li> <li>• Despite the proposed modifications, the appearance of the building will be largely unchanged when viewed from surrounding sites and the public domain.</li> </ul>
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1892 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The external appearance of the building will be largely unchanged by the proposed modifications.</li> <li>• Despite the proposed modifications, the appearance of the building will be largely unchanged when viewed from surrounding sites and the public domain.</li> <li>• The proposed changes will not change the use of the development.</li> <li>• The modifications will not result in additional impacts on surrounding sites and the public domain.</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
(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	
(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	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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;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.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## 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 18/11/2020 to 02/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Shahen Mekertichian	73 Bower Street MANLY NSW 2095
Mr Cameron Matthew Johnstone	34 Elton Road LINDFIELD NSW 2070
Mr Freerk Waling Speckmann	5 / 5 Pavilion Street QUEENSCLIFF NSW 2096
Chadd John Lambert Jesse William Kevin Lambert Stephanie Jayne Degiorgio	1 / 5 Pavilion Street QUEENSCLIFF NSW 2096
Mr Michael David Vanderfield	2 B Pavilion Street QUEENSCLIFF NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- Fence height
- View impact
- Future use of pool curtilage as a cabana

The matters raised within the submissions are addressed as follows:

- *Concern is raised that the as-built wall exceeds Council fence height requirements.*

Comment:

The as-built wall is not located upon a property boundary and is not considered to be a 'side' or 'rear' fence. As such, the 1.8m height limit prescribed under Clause D15 of WDCP does not apply to the structure. The height of the wall is measured as 2.3m above the existing ground level, which is substantially below the building height limit of 8.5m.

- *Concern is raised that the as-built framed glazed wall unreasonably impacts upon the views of properties adjacent and opposite the site.*

Comment:

An inspection of the subject site was conducted as part of the assessment of this application where the impact on existing view corridors from neighbouring and nearby properties in accordance with the view loss planning principle established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* was considered.

The as-built wall is not considered to unreasonably impact upon the view corridors of adjacent and nearby properties. The planning principle set out that any view from another property must be considered as a whole. While the wall does obscure a small area of water from some adjacent properties, there is no substantial impact to the view corridor when considered as a whole. The view towards Freshwater Beach and the coast and water interface of the northern headland is not impacted by the wall. The wall does not impact upon the view corridor from properties opposite the site as the wall is located at the rear of the site and not seen from the street.

As such, the as-built wall is not considered to unreasonably impact upon the views enjoyed by adjacent and nearby properties.

- *Concern is raised that the area to the east of the swimming pool will be used as a roofed cabana in the future.*

Comment:

Assessment of this application is based on the submitted documentation and plans. The plans do not indicate the proposal of a roof above the curtilage to the east of the pool. Any alleged unauthorised work conducted on the site will be forwarded to Council's Building Control team for further investigation.

Some comments in the submissions relate to development approved under DA2018/0612, which is not the subject of this modification application. Objections to this application based on concerns relating to DA2018/0612 or any subsequent modification of that consent is not considered in this assessment.

## **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 (Coastal Management) 2018

The modification is considered to satisfy the relevant provisions of Clause 13, 14 and 15 of CM SEPP. The modification does not alter the fundamental approved built form to that of the original approved development, which was assessed under the provisions of SEPP 71 (now repealed).

### Warringah Local Environmental Plan 2011

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	1.8m	2.3m	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

### Warringah Development Control Plan

#### Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	1.2m (proposed pool gate)	Unaltered	Yes
B3 Side Boundary Envelope	NW - 5m	Within envelope	Unaltered	Yes
	SE - 5m	Within envelope	Unaltered	Yes
B5 Side Boundary Setbacks	NW - 0.9m	Existing dwelling house - 0m	Unaltered	As approved

		Proposed fence - 0m	Unaltered	As approved
		Proposed tiling - 0.1m	Unaltered	As approved
		Proposed stairs - 2.9m	Unaltered	Yes
		Proposed pool - 11.2m	Unaltered	Yes
	SE - 0.9m	Proposed tiling and pool heater - 0.1m	Unaltered	As approved
		Existing dwelling house - 1.2m	Unaltered	Yes
		Proposed swimming pool - 3.4m	Unaltered	Yes
B7 Front Boundary Setbacks	6.5m	11.2m	Unaltered	Yes
B13 Coastal Cliffs Setback	N/A	Encroaches into setback area	Unaltered	As approved
D1 Landscaped Open Space and Bushland Setting	40%	43%	Unaltered	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B13 Coastal Cliffs setback	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

#### **B13 Coastal Cliffs setback**

The modification does not alter the approved non-compliance with the Coastal Cliffs setback requirement.

#### **E10 Landslip Risk**

The modified fence is not expected to alter the recommendations of the approved Geotechnical Assessment. No further geotechnical investigation is required for this application.

#### **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;
- Warringah Local Environment Plan;
- Warringah 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. Mod2020/0582 for Modification of Development Consent DA2018/1892 granted for demolition works and construction of a swimming pool on land at Lot 1 DP 900658,7 Pavilion Street, QUEENSCLIFF, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Part Site Plan of the South East Corner of the Property Detailing the As Constructed Safety Fence on the Cliff Top	28/10/2020	Flavio

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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**



**Nick Keeler, Planner**

The application is determined on 18/12/2020, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**