

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0417
Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot 13 DP 11737, 26 The Drive FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2023/0019 granted for Alterations and additions to a dwelling house including secondary dwelling.
Zoning:	Warringah LEP2011 - 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:	Rosemary Ashton David Ashton
Applicant:	Jaclyn Elizabeth Smith

Application Lodged:	04/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	10/08/2023 to 24/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify Condition No.15 - Protection of Street Trees imposed under DA2023/0019. The modification proposes the removal of an existing street tree, a Banksia Integrifolia, that will be impacted by the proposed excavation and infrastructure works.

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 - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

SITE DESCRIPTION

Property Description:	Lot 13 DP 11737 , 26 The Drive FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of The Drive.</p> <p>The site is irregular in shape with a frontage of 16.41m along The Drive and a maximum depth of 33.566m. The site has a surveyed area of 512.3m².</p> <p>The site is located within the R2 Low Density residential zone from WLEP 2011 and accommodates a two storey dwelling house. There is no parking on the site, however a parking bay is located within the road reserve.</p> <p>The site slopes from the north-western boundary downwards to the south-western boundary at an average gradient of approximately 10 degrees.</p> <p>The site contains garden beds, lawn areas, medium to large shrubs and trees. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by a mix of detached residential dwelling houses of varying ages and architectural styles. Surrounding properties are largely oriented towards views of Freshwater Beach to the south-east and towards North Curl Curl headland to the north-east.

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:

DA2023/0019

Development application for alterations and additions to a dwelling house including a secondary dwelling

Approved on 14 March 2023

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 DA2023/0019, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • All trees and vegetation within the subject site will be maintained under this modification application • No changes are proposed to the previously approved landscaped open space areas • Council's Landscape Officer is supportive of the tree removal, which is considered to be of minimal environmental impact
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2023/0019 for the following reasons:</p> <ul style="list-style-type: none"> • No changes are proposed to the previously approved built form
<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>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 62</u> and/or 64 of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/08/2023 to 24/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent DA2023/0019.</p> <p>The modification proposes the removal of an existing street tree, tree 1 as identified in the Arboricultural Impact Assessment, that will be impacted by the proposed excavation and infrastructure works. Due to its location and ongoing damage from passing vehicles no concerns are raised with its removal. Due to the removal of tree 1 conditions 21 Project Arborist, 25 Protection of Existing Street Trees and 36 Condition of Retained Vegetation - Project Arborist shall be deleted, and a new condition, Tree Removal Within the Road Reserve, shall be added as part of this modification.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iii) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not result in any adverse impacts on the coast and will maintain the visual amenity of surrounding properties.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development is not anticipated to cause any increased risks of coastal hazards on the subject site or other land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.1m (top of proposed studio)	Unaltered	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	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	5.7m	Unaltered	Yes
B3 Side Boundary Envelope	North: 5m	Within Envelope	Unaltered	Yes
	South: 5m	Outside Envelope (Lift)	Unaltered	As approved
B5 Side Boundary Setbacks	North: 0.9m	3.7m	Unaltered	Yes
	South: 0.9m	0.6m (Lift)	Unaltered	As approved
B7 Front Boundary Setbacks	6.5m	Nil - 6.1m	Unaltered	As approved
B9 Rear Boundary Setbacks	6m	>6m	Unaltered	Yes
D1 Landscaped Open Space and Bushland Setting	40% (204.92m ²)	32.79% (168m ²)	Unaltered	As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	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	No	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
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

No changes are proposed to the built form of the dwelling house or secondary dwelling approved under DA2023/0019, therefore no further deviation to the building envelope control is sought as part of the modification. As such, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

B5 Side Boundary Setbacks

No changes are proposed to the built form of the dwelling house or secondary dwelling approved under DA2023/0019, therefore no further deviation to the side boundary setback control is sought as part of the modification. As such, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

B7 Front Boundary Setbacks

No changes are proposed to the built form of the dwelling house or secondary dwelling approved under DA2023/0019, therefore no further deviation to the front setback control is sought as part of the modification. As such, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

D1 Landscaped Open Space and Bushland Setting

The proposal involves the removal of one (1) tree within the road reserve. The modification will not involve the removal of vegetation within the subject site or alter the numerically non-compliant landscaped area approved under DA2023/0019. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

E1 Preservation of Trees or Bushland Vegetation

The application is accompanied by an Arboricultural Impact Assessment Report (prepared by Complete Arborcare dated 26 July 2023) which notes the tree proposed for removal (*Banksia integrifolia*) has historical and ongoing stem damage occurring from vehicle impact due to its location within the road reserve. Moreover, due to the tree showing a stem lean towards the road along with it being seated above road level with limited deep soil, removal and replacement is recommended. The application has been referred to Council's Landscape Officer who raises no concerns with the removal of this tree and modification of the condition set imposed under DA2023/0019. This assessment concludes that the removal of this tree will not result in any adverse impacts on the scenic value and character that trees provide within the urban forest of the Northern Beaches.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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. Mod2023/0417 for Modification of Development Consent DA2023/0019 granted for Alterations and additions to a dwelling house including secondary dwelling. on land at Lot 13 DP 11737,26 The Drive, FRESHWATER, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

INSTRUCTIONS - For each modification you need to include a summary in the table below of each modification determination that applies to the development. In the modification summary table below, identify the Application PAN Number, Determination Date, and a Modification Description, and insert added, deleted and amended condition number/s in the modification description.

Application Number	Determination Date	Modification description
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PAN - 355794 MOD2023/0417	The date of this notice of determination	Modification of Development Consent DA2023/0019 granted for Alterations and additions to a dwelling house including secondary dwelling. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation Add Condition No.23A - Tree Removal Within the Road Reserve Delete Condition No.21 - Project Arborist Delete Condition No.25 - Protection of Existing Street Trees Delete Condition No.36 - Condition of Retained Vegetation - Project Arborist
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Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA_001	-	Site Plan	Jaclyn Smith Architectural Design	July 2023
DA_003	-	Demolition Plan	Jaclyn Smith Architectural Design	July 2023
DA_100	02	Garage Plan	Jaclyn Smith Architectural Design	July 2023
DA_101	02	Studio Plan	Jaclyn Smith Architectural Design	July 2023
DA_102	02	Ground Floor Plan	Jaclyn Smith Architectural Design	July 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment Report	1	Complete Arborcare	26 July 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition No.23A - Tree Removal Within the Road Reserve to read as follows:

a) this consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

i) tree 1 - Banksia integrifolia.

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

c) removal of the approved tree/s by the applicant in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

C. Delete Condition No.21 - Project Arborist to read as follows:

DELETED

D. Delete Condition No.25 - Protection of Existing Street Trees to read as follows:

DELETED

E. Delete Condition No.36 - Condition of Retained Vegetation - Project Arborist to read as follows:

DELETED

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

Signed



Grace Facer, Planner

The application is determined on 25/08/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments