

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0019
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Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 7 DP 238331, 10 Courtley Road BEACON HILL NSW 2100
Proposed Development:	Modification of Development Consent DA2022/0978 granted for construction of a retaining wall.
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:	Andrew James lemma Olivia Page Boyle
Applicant:	Andrew James lemma

Application Lodged:	27/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	02/02/2023 to 16/02/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks to amend Condition 5 of development application D2022/0978 for the construction of a retaining wall.

Condition 5, point 2 of DA2022/0978 states:

"Fill is to be removed from the north eastern corner of the site for the entire length of the common boundary with number 12 Courtley Road, and for a width of 2m from the boundary. The ground level is to be no higher than RL154.5 for a width of 2m from the common boundary. The area is to be landscaped with screen planting and made nontrafficable."

The application is requesting the condition to be updated to reflect the following:

*“Fill is to be removed from the north eastern corner of the site for the entire length of the common boundary with number 12 Courtley Road, and for a width of 2m from the boundary. The ground level is to be no higher than RL154.5 **in the north-eastern corner of the site for a width of 2m from the common boundary.** The area is to be landscaped with screen planting and made nontrafficable.”*

The applicant has requested this condition to be reviewed following excavation revealing that a ground level of RL154.5 at the shared property boundary between number 10, 12 and 14 would not be reasonably achieved and would result in a ground level much lower than existing fencing and retaining walls.

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 7 DP 238331 , 10 Courtley Road BEACON HILL NSW 2100
Detailed Site Description:	<p>The site has an area of 556 m2 which is currently a vacant block of land, with the retaining wall footing constructed (approved per BIC 2022/0078) and temporary timber shoring along the southern and western boundaries. The site is an irregular shaped block with a street frontage of 15.2m along Courtley Road on the northern boundary. The eastern boundary is 33.8m, southern boundary is 30.4m and the western boundary is 19.8m.</p> <p>There is a gradient of 2.3m from the rear south western corner down to the front north eastern corner of the</p>

boundary, with majority of this gradient focussed on the north eastern quadrant of the site. There has been unauthorised cut and fill of the site in the past (see history section of this report) to create a level building platform on the site.

The site is located within a residential area, where the street has varying housing including both old and new dwellings, a variety of facades, and a mixture of one- and two-story dwellings. The site is zoned R2 - Low Density Residential. The site is currently serviced with water, sewer connection, and electricity.

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:

DA2022/1978 for construction of a dwelling house was determined as approved under delegation by Northern Beaches Council on the 31 January 2023.

Mod2023/0019 for modification of development consent DA2022/0978 was lodged and formally accepted on the 19 January 2023. At the time of assessment this modification application was with Council for assessment. The area of the site that this modification relates to is not part of this subject (DA2022/1978) development application and therefore no contradictory elements will be approved under this dwelling house application.

DA2022/0978 for construction of a retaining wall was determined as approved under delegation by Northern Beaches Council on the 7 October 2022.

PLM2022/0085 Pre-lodgement Meeting was held on 23 May 2022 for Construction of a dwelling house. The notes for this application relate mainly to a new dwelling on site, and not to the existing retaining

wall footings or excavation and fill on site. However, they do note that the consent for DA2020/1606 required removal of the fill in the north eastern corner of the site by condition of consent.

BC2022/0078 Building Information Certificate for Footing associated with retaining wall was issued by Council on 4 May 2022. This BIC related to the retaining wall footings along the southern and western boundaries, but not to the fill in the north eastern corner of the site.

BC2021/0304 Building Information Certificate for retaining wall along the western & southern boundaries to satisfy a deferred commencement requirement of Development Consent. DA2020/1606 was refused by Council on 28 April 2022. This was refused due to only the footing being constructed on site, and the BIC could not therefore be issued for 'retaining walls' and other works.

DA2020/1606 for Construction of a dwelling house was approved by the Northern Beaches Local Planning Panel on 30/06/2021. During the assessment process of DA2020/1606, concern was raised from the adjoining properties to the east in particular No. 12 Courtley Road. The issues raised in the submission were related directly to the siting of the proposed dwelling and the potential overlooking impacts towards the private open space and western (rear) elevation of the dwelling. The submissions raised questions regarding unauthorised fill being added in the north eastern corner of the site. A condition was therefore included in the consent requesting the removal of fill in the south east corner of the site as to achieve a finished ground level no greater than RL154.5.

A deferred commencement condition was also included in the consent, requiring the application to seek approval for a Building Information Certificate for the existing retaining walls and subsoil drainage along the western and southern boundaries.

DA2020/0585 for Construction of retaining walls and fencing was withdrawn at the request of Council staff on 09/09/2020 by the applicant. This application was for retaining walls on site, including more than what is now proposed in the current application. It was withdrawn due to Council being unable to approve due to concerns with previous unauthorised excavation and fill on site and subsequent potential privacy concerns to neighbours (12 Courtley Road in particular), and due to concerns with the legitimacy of CDC No.1805/19 issued by Accredited Building Certifiers dated 11 February 2020.

PLM2020/0239 Pre-lodgement Meeting was held on 15/10/2020 for Construction of a dwelling house including a swimming pool. The notes for this PLM state that "the levels of the north-east corner of the site should be returned to pre-existing ground levels to ensure the development reduces its visual impact and ensures no adverse privacy to adjoining dwellings".

CDC2020/0112 (Council reference) or Certificate number 1805/19 approved by Accredited Building Certifiers on 11/02/2020 for Construction of a two storey dwelling with attached garage and swimming pool. The works approved under this application are have not been carried out.

CDC2020/0048 Certificate number 1861/19 for Demolition - Certificate number 1861/19 was approved by Accredited Building Certifiers on 23/01/2020.

DA2018/1886 for Demolition works and construction of a dwelling house was approved by the Northern Beaches Local Planning Panel on 17/07/2019. This application appears to have been approved prior to the unauthorised cut and fill taking place on site. Comparison of the survey submitted with this application (37231/D-3d Chadwick Cheng Consulting Surveyors, dated 23.05.2018) with the survey submitted with the current application, demonstrates the difference in levels in the north east corner of the site.

Application History

A site visit was conducted on the 29 March 2023 by Council.

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 DA2022/0978, 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"> • The modification directly relates to the approved development application • No physical works are proposed
(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 DA2022/0978 for the following reasons:</p> <ul style="list-style-type: none"> • The modification will result in a similar development to that approved
<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 2021, and the Northern Beaches Community Participation 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	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)(iia) – 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 of 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> <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 clause is not relevant to this application.</p>

Section 4.15 'Matters for Consideration'	Comments
	<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 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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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 02/02/2023 to 16/02/2023 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Kenneth Bruce Smith	12 Courtley Road BEACON HILL NSW 2100

The submissions raised concerns that they would like to see the 2m wide strip in question has a finished level after landscaping that is generally the height of one besser block below the top of the existing besser block of the retaining wall that sits on the subject boundary.

Comment:

The condition will continue to require the 2m strip to be landscaped. Council conducted a site visit at the subject site and it was evident the revised ground levels (requested under this modification) was acceptable. It was evident from the site visit that the ground level rises slightly from the north eastern portion of the site as it approaches the boundary of number 10, 12 and 14 Courtley Street as the fence steps up. It was also noted that any further excavation to achieve a level of 154.5 RL would result in excavation below the existing fence line and retaining walls.

The modification will continue to result in a reasonable level of privacy which was the intent of the original condition requiring excavation to lower the ground level near the boundary. Subsequently resulting in a development that will minimise unreasonable impacts on surrounding land.

REFERRALS

No referrals were sent in relation to this application

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 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?	
zone objectives of the LEP?	Yes

Principal Development Standards

There are no changes to the principal development standards as approved and therefore no assessment required.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

There are no changes to the built form controls as approved and therefore no assessment required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A
B5 Side Boundary Setbacks	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A
B9 Rear Boundary Setbacks	N/A	N/A
C2 Traffic, Access and Safety	N/A	N/A
C3 Parking Facilities	N/A	N/A
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	N/A	N/A
D7 Views	N/A	N/A
D8 Privacy	Yes	Yes
D9 Building Bulk	N/A	N/A
D10 Building Colours and Materials	N/A	N/A
D11 Roofs	N/A	N/A
D12 Glare and Reflection	N/A	N/A
D14 Site Facilities	N/A	N/A
D20 Safety and Security	N/A	N/A
D21 Provision and Location of Utility Services	N/A	N/A
D22 Conservation of Energy and Water	N/A	N/A

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. Mod2023/0019 for Modification of Development Consent DA2022/0978 granted for construction of a retaining wall. on land at Lot 7 DP 238331, 10 Courtley Road, BEACON HILL, subject to the conditions printed below:

A. Modify Condition 5 - Amendments to the Geotechnical Report and Plans to read as follows:

The following amendments are to be made to the geotechnical report:

- Address all matters required to be addressed by clause E10 Landslip Risk of the Warringah DCP, and update or add any recommendations if necessary.
- Fill is to be removed from the north eastern corner of the site for the entire length of the common boundary with number 12 Courtley Road, and for a width of 2m from the boundary. The ground level is to be no higher than the RLs indicated in the survey prepared by Nastasi & Associates Consulting Engineers dated 23 December 2022.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the 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



Clare Costanzo, Planner

The application is determined on 03/04/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments