

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0012
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 6 DP 13900, 139 Headland Road NORTH CURL CURL NSW 2099
Proposed Development:	Modification of Development Application DA2019/1369 which granted consent for demolition works and the construction of a dwelling house and swimming pool.
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:	Matthew David Lewis Karina Jane Wells
Applicant:	Karina Jane Wells

Application Lodged:	18/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	24/01/2023 to 07/02/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 4.55(1A) of the Environmental Planning & Assessment Act 1979 and seeks to modify development consent DA2019/1369 (for a dwelling house).

The proposed modifications relate to the approved stormwater management system, being a on-site detention (OSD) and dispersal trench system. The modification involve the relocation of OSD tanks, from north of the swimming pool to south of the pool, under an approved deck. There will also be minor re-configurations to underground pipes that lead to the dispersal trench.

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 6 DP 13900 , 139 Headland Road NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Headland Road.</p> <p>The site is regular in shape with a width of 14.3m and a depth of 39.6m. The site has a surveyed area of 567m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and outbuilding.</p> <p>The land has a southerly aspect with a moderate slope falling down from the front boundary to the rear.</p> <p>There is no significant vegetation on the site.</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</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:

DA2019/1369: Development consent granted for demolition works and the construction of a dwelling house and swimming pool was approved by Council on 29 April 2020, subject to deferred commencement for acquisition of a drainage easement, for the overflow of the approved OSD system. This consent is the subject of the proposed modification.

MOD2021/0831: Application made under Section 4.55(1A) to modify consent DA2019/1369, specifically to delete the Deferred Commencement condition of consent that required the creation of a drainage easement through the adjoining downstream properties on Parr Parade. The modification also involved a revised stormwater management system, with a dispersal system to offset the loss of the easement. This application was approved on 16 December 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 DA2019/1369, 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 proposed modifications are subterranean and make no tangible change on the approved structure that is above the ground; and the revised stormwater management system has been adequately designed and professionally certified to ensure no adverse impact on the hydrology of the immediate area.
(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 DA2019/1369 for the following reasons:</p> <ul style="list-style-type: none"> the proposed modifications are subterranean and make no tangible change on the approved structure that is above the ground; and the changes to the approved stormwater management system retain the basic components of the originally approved (as modified) system.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, 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 of</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
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 2011 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 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. Additional information was requested in relation to stormwater management, in correspondence dated 20 February and 15 March 2023.</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 matter has been addressed via a condition of the original consent.</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 matter has been addressed via a condition of 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 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 2011 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 24/01/2023 to 07/02/2023 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The proposed modification is a redesign of the stormwater system with the OSD tanks located under the patio. Based on the submitted stormwater plan by NY Civil the system has been redesigned to discharge to a level spreader with a significant reduction in OSD volume to the previously approved design. The predevelopment flows appears high. If the proposed discharge is to a level spreader, the applicant shall provide a design in accordance with Appendix 4 of Council's Water Management for Development Policy. A drains model and sufficient calculations shall be provided to demonstrate that the site flow are controlled in accordance with appendix 4 and the OSD tanks will have no overflow in the 1% AEP.</p> <p>Additionally details are to be provided to demonstrate that there are no structures along the rear of the property to impede the surface flow from the level spreader.</p> <p>Additional Information Provided on 23/2/2023 The submitted Drains model has been reviewed. In accordance with Council's Water Management for Development Policy the absorption system shall be sized to cater for the 2%AEP storm. However the submitted Drains model indicates the system overflows for the 2% AEP storm. Due to the low infiltration rate sufficient OSD volume or absorption area must be provided to ensure no overflow in the 2% AEP storm.</p> <p>Alternatively the stormwater discharge can be via a level spreader designed in accordance with Appendix 4 of the above policy. Details are to be provided to demonstrate that there are no structures along the rear of the property to impede the surface flow from the level spreader.</p> <p>Additional Information Provided on 20/3/2023 The amended plans and Drains model has been reviewed. No objections to approval subject to amendments to Conditions of Consent DA2019/1369 & MOD2021/0831 as follows:</p> <p>Amend Condition 7 to</p> <p>On-Site Stormwater Detention Details The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NY Civil Engineering, job number E220612, drawing number D2 to D8 dated 20/3/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and</p>

Internal Referral Body	Comments
	<p>registered in the General Area of Practice for civil engineering.</p> <p>The drainage plans must address the following:</p> <ul style="list-style-type: none"> i. The level spreader design shall be in accordance with Appendix 4 ii. No retaining structures are to obstruct the overland flow from the Level Spreader <p>Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.</p> <p>Reason: To ensure appropriate provision for disposal and stormwater management arising from development.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposed modification is acceptable. No modified / additional conditions of consent were recommended.

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?	Yes
zone objectives of the LEP?	Yes

Compliance Assessment

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
E10 Landslip Risk	Yes	Yes

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. Mod2023/0012 for Modification of Development Application DA2019/1369 which granted consent for demolition works and the construction of a dwelling house and swimming pool. on land at Lot 6 DP 13900, 139 Headland Road, NORTH CURL CURL, subject to the conditions printed below:

A. Add Condition No.2B - 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 Approved Plans and Supporting Documentation referred to in Condition 2, as modified by the following:

a) Modification Approved Plans

Engineering Plans		
Drawing No.	Dated	Prepared By

D2 Issue B	20 March 2023	NY Civil Engineering
D3 Issue B	20 March 2023	NY Civil Engineering
D4 Issue B	20 March 2023	NY Civil Engineering
D5 Issue B	20 March 2023	NY Civil Engineering
D6 Issue B	20 March 2023	NY Civil Engineering
D7 Issue B	20 March 2023	NY Civil Engineering
D8 Issue B	20 March 2023	NY Civil Engineering

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Modify Condition No.7 - On-site Stormwater Detention Details to read as follows:

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NY Civil Engineering, job number E220612, drawing number D2 to D8 dated 20/3/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The level spreader design shall be in accordance with Appendix 4
2. No retaining structures are to obstruct the overland flow from the Level Spreader

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

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

Signed



Nick England, Planner

The application is determined on 13/04/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments