

NOLAN PLANNING CONSULTANTS

an

2 November 2020

Northern Beaches Council
PO Box 82
MANLY NSW 1655

Dear Sir/Madam,

SECTION 4.55(1a) APPLICATION

Premises:	Lot 1 in DP 900658, No. 7 Pavilion Street, Queenscliff
Amendments:	Amend Plans to alter pool fence
Development Application:	DA 2018/1892
Date of Determination:	18/03/2019

INTRODUCTION

On behalf of Ms Megan O’Leary I seek Council consent pursuant to Section 4.55(1a) of the *Environmental Planning & Assessment Act* 1979 to amend the approved plans specified in Development Application No. DA2018/1892 relating to the construction of a swimming pool and associated works.

BACKGROUND

Development Consent for the construction of a swimming pool (DA2018/1892) on the subject site was approved by Council on 18 March 2019. The approval provided for a swimming pool fence immediately to the east of the pool.

This application seeks to amend the approved plans to incorporate a 1.94m high framed glazed panel to form part of the swimming pool fence. This is detailed on the plans submitted with the application and dated 28/10/2020.

This Section 4.55(1a) application carries out a detailed assessment against the relevant provisions of the Warringah LEP and DCP. It is considered that the proposed amendments are consistent with the relevant planning controls and is worthy of the approval.

PROPOSED MODIFICATION

This proposal seeks to amend the approved plans as detailed in the plans prepared by Flavio and dated 28/10/2020. The plan provides for a 1.94m high framed glazed panel towards the southeast corner of the pool area. This framed portion of the panel is painted to match the existing dwelling and is not readily visible from the beach or northern headland.

LEGISLATION

Section 4.55(1a) of the Act states:

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

Comment: The Consent granted approval for the construction of a new swimming pool and associated works. This application proposes a minor amendment to the plans to provide a framed glazed panel with a height of 1.94m to the southeast corner of the pool area to replace a standard height pool fence. The pool fence is not readily visible from the public domain. The proposed amendments have minimal environmental impact, if any.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: The original consent granted approval to the construction of a swimming pool ancillary to an existing dwelling. The proposed amendments provide for minor amendments to provide a higher pool fence to improve safety to the occupants. The proposed amendments are considered to be substantially the same development.

(c) it has notified the application in accordance with:
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan 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.

Comment: The application will be notified in accordance with Council guidelines.

LEGISLATION

Planning for Bushfire Protection 2006

The subject site is not identified as bushfire prone vegetation buffer on Council's Bushfire Prone Land Map and therefore the provisions of Planning for Bushfire Protection 2006 do not apply.

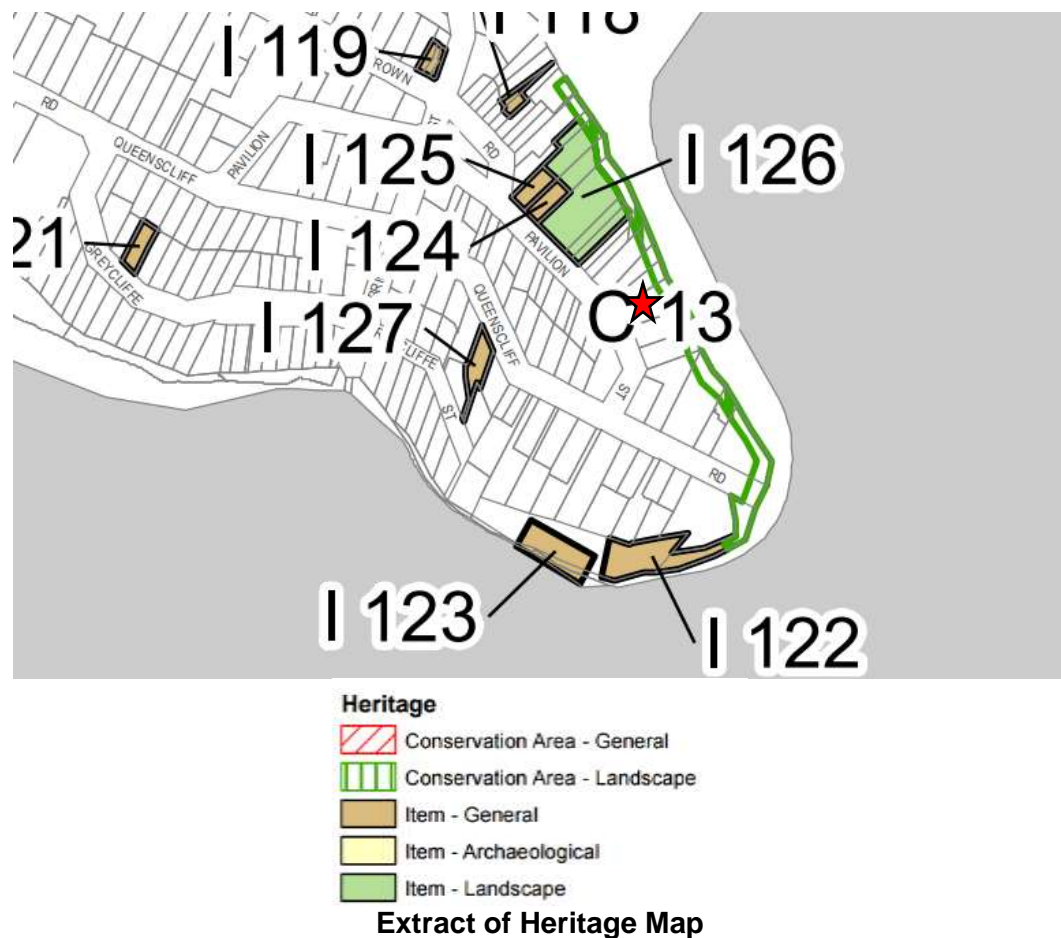
Warringah Local Environmental Plan 2012

The site is zoned R2 Low Density Residential under the provisions of the Warringah Local Environmental Plan. Development for the purpose of alterations to an existing dwelling house are permissible with Consent in this zone.

The following provisions of the LEP apply to the proposed development:

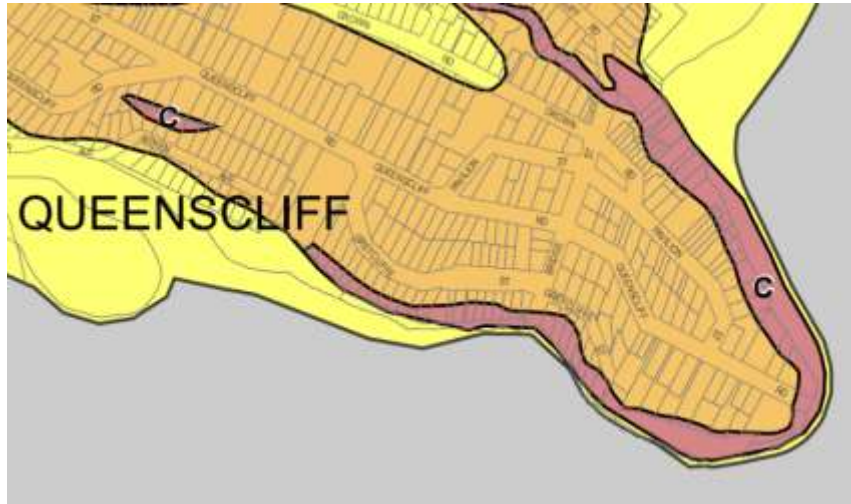
Clause	Development Standard	Proposal	Compliance
Clause 4.3 Height of Buildings	8.5m	1.94m	Yes

Clause 5.10 - Heritage Conservation



The rear eastern portion of the site is identified as being within the C13 Queenscliff Coastal Cliffs Conservation Area. It is noted that the proposed amendments do not extend into that portion of the site that is located within the conservation area. Further the amendment to the pool fencing is in the same location as the approved fencing. It is considered that the proposed works will not have any detrimental impact on the significance of the conservation area for the following reasons:

Clause 6.4 – Development on Sloping Land




Extract of Landslip Map

The site is identified as being partly within Category B and Category C of the Landslip Risk Map. The amendment to the pool fence will not result in any earthworks and as such the original geotechnical report can continue to be relied upon.

There are no other provisions of the Warringah Local Environmental Plan 2011 that apply to the proposed development.

Warringah Development Control Plan

Clause	Requirement	Compliance
B13 – Coastal Cliffs Setback	The site is identified as C – Coastal Cliff Setback requiring all works to be within a setback measured 25m from the street frontage.	Yes All proposed works comply with this requirement. (refer to architectural plans)

Clause	Requirement	Compliance
		
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	Yes The proposal provides for a landscaped area of 405.48m ² or 44.5% of the site which complies with this clause.
D2 - Private Open Space	Dwelling houses with three or more bedrooms Min 60m ² with min dimension 5m	Yes The proposed works maintain an adequate area of private open space.
D6 – Access to sunlight	The controls require that sunlight to at least 50% of the private open space of both the subject and adjoining properties' private open space receives not less than three hours sunlight between 9am – 3pm on 21 June winter solstice.	Yes Shadow diagrams have been submitted with the application. Given the reduction in height and increased setback to the upper level from the southern boundary, the proposed amendments will not result in additional overshadowing to the adjoining properties.
D7 - Views	View sharing to be maintained	Yes The proposed amendment to the pool fence will not obstruct views. The pool fence is predominantly glazed and located at ground level.

Clause	Requirement	Compliance
D10 – Building Colours and materials	External finishes and colours sympathetic to the natural and built environment	Yes The frame of the glazed panel has been painted to match the external finishes of the dwelling.
E4 – Wildlife Corridors	Retain and enhance native vegetation and the ecological functions of wildlife corridors.	Yes The pool fence panel is located over the existing hard paved areas and do not impact on the wildlife corridors.
E5 – Native Vegetation	Provide natural habitat for local wildlife, maintain natural shade profiles and provide psychological & social benefits.	Yes The rear portion of the site is identified as 'native vegetation' on Council's map. However, the pool fence panel is located over the existing footprint and do not impact on native vegetation.
E6 - Retaining unique environmental features	Unique or distinctive features within a site to be retained	Yes The pool fence panel is located over the existing hard surface area and does not impact on any environmental features of the site.
E7 – Development on land adjoining public open space	To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.	Yes The site is identified on Council's map as adjoining public open space to the rear. The proposed pool fence panel is located over the existing footprint/hard surface area and does not impact on the adjoining public open space.

Clause	Requirement	Compliance
		The dwelling continues to overlook the open space and provide for appropriate bulk and scale.
E10 – Landslip Risk	Identified on map as B and C	The works do not require any excavation and as such the original geotechnical assessment is relied upon.

JUSTIFICATION

The proposed amendments to the approved plans are considered to be justified for the following reasons:

- The amendment to the pool fence, to provide a framed glazed panel, is to ensure the safety of the occupants. A standard height (1.2m) pool fence is considered inadequate in this area. People (particularly children) utilizing the deck area could easily climb the 1.2m approved fence and the topography of the site is such that there is a drop in excess of 20m. The amended panel provides for a height of 1.94m which provides increased safety.
- The perimeter frame is painted to match the external finishes of the dwelling and as such is not readily visible from the beach or opposing headland.
- The framed glazed panel does not have any detrimental impact on the adjoining properties.

It is therefore considered appropriate that the amendments to the plans should be supported.

CONCLUSION

For the reasons stated above it is considered that this application to amend the plans as detailed. Should you require any further information please do not hesitate to contact me.

Yours faithfully,



Natalie Nolan