

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0302
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 61 DP 12578, 25 Lakeside Crescent NORTH MANLY NSW 2100
Proposed Development:	Modification of Development Consent DA2019/0330 granted for alterations and additions to a dwelling house including a 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:	Mari Catherine Notaras
Applicant:	Vaughan Patrick Milligan

Application Lodged:	13/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/07/2020 to 04/08/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify the approved alterations and additions to the existing dwelling. In detail, the modification involves:

- Change of level of deck adjacent to pool, and pool coping from RL2.45 to be RL2.65
- Change of lawn level from RL2.06 to RL2.25
- New retaining wall to northern 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 - B9 Rear Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 61 DP 12578 , 25 Lakeside Crescent NORTH MANLY NSW 2100
Detailed Site Description:	<p>The subject site consists of an allotment located on the eastern side of the bend between Lakeside Crescent and Riverview Place.</p> <p>The site is regular in shape with a frontage of 13.75m and a depth of 45.72m. The site has a surveyed area of 626m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site.</p> <p>The site is relatively flat and has landscaping to the front and rear of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</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:

- DA2000/5283 for Deck and Pergola granted consent on 5 March 2001.
- DA2019/0330 - Alterations and additions to a dwelling house including swimming pool approved 19 July 2019. This is the consent in which this application seeks to modify.

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 DA2019/0330, 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> <p>The proposal involves a the raising of the pool and lawn area by no more than 0.2m. This raise in height would not cause any unreasonable amenity or visual impact. The proposal also involves a new retaining wall which is well setback from the boundary and is lower in height than the maximum height specified for exempt development under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</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>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 DA2019/0330 for the following reasons:</p> <p>The proposal raises approved features of the development and introduces a small retaining wall which is ancillary to existing landscaping. As such, the proposal does not introduce substantial bulk, intensification of use, or any other substantial change. The proposed works are therefore substantially the same as approved.</p>
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	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 and Warringah Development Control Plan.
(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	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)	<u>Division 8A</u> of the EP&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. <u>Clause 98</u> of the EP&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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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 'Matters for Consideration'	Comments
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 21/07/2020 to 04/08/2020 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification will not result in additional impact to native vegetation or wildlife habitat. As such, there are no biodiversity objections.
NECC (Coast and Catchments)	<p>The Modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment</p>

Internal Referral Body	Comments
	<p>Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the Mod DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Warringah LEP 2011 and Warringah DCP 2011</p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation for the protection of waterways. The applicant is required to install sediment and erosion controls to prevent the migration of sediment off site during construction. With these conditions it is considered is unlikely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological and ecological environment. It is therefore recommended for approval.</p> <p><u>Assessing officer comment</u></p> <p>This condition was imposed on the original consent and remains on the consent.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed modification has been adequately assessed by Stellen Consulting and is not considered to increase flood risk. No flood related development controls applied.</p>

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

11 Development on land in proximity to coastal wetlands or littoral rainforest

(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The alterations involve works with minor changes to ground levels. This would not have an unreasonable impact on coastal wetlands or rainforest.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

(a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

(b) the proposed development:

(i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
(ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and

(iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

(c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The proposal will not have a detrimental impact on the above and is not likely to alter coastal processes. This is a result of the lack of additional bulk proposed and the minor change in levels.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

Comment:

The proposal will not have an adverse impact on the above as the proposed works do not involve excavation, substantial addition of bulk, or any other change to the natural environment which could cause an unreasonable impact on the coastal environment area.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposal maintains the approved siting of the pool and dwelling, and the modification does not add any substantial bulk.. As such, the design reasonably minimises impact.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B9 Rear Boundary Setbacks	6m	1m (swimming pool)	1m (swimming pool)	No (see comments)

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
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed swimming pool area is raised by 0.2m, and remains non-compliant with the numerical control for rear setbacks. In this regard, the area has a setback of 1m to the rear boundary and more than 50% of the pool is within the 6m area required the rear setback.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The original proposal provided an increase in the total amount of landscaping that exists on the site. This includes landscaping to the front and rear of the property that provides for a reasonable amount of deep soil areas.

- *To create a sense of openness in rear yards.*

Comment:

The areas to be raised by 0.2m are the swimming pool and lawn. As such, the raise in levels does not increase the presentation or impact of any part of the dwelling or other building bulk. This retains a sense of openness.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The subject site adjoins Manly Creek at the rear of the site so that there is not any unreasonable privacy impact caused by the pool area being close to the rear boundary. The level of the pool area is also maintained to a level which would not cause any substantial overlooking or other unreasonable amenity impact.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The proposed dwelling is within a streetscape that involves a number of examples of swimming pools in the rear setback. In addition to this, there are swimming pools located from 9-17 Lakeside Crescent that are located in close proximity to the rear boundary. As such, the proposed swimming pool and landscaping within the rear setback will provide an outcome that maintains the existing visual continuity.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The subject site does not abut a residential dwelling to the rear and there is appropriate physical separation between the swimming pool and neighbouring living spaces (to the sides) to ensure there would be no unreasonable privacy impact.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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. Mod2020/0302 for Modification of Development Consent DA2019/0330 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 61 DP 12578,25 Lakeside Crescent, NORTH MANLY, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A3/a Ground Floor Plan	24/06/2020	Sally Gardner Design and Draft
A4/a Swimming Pool Plan and Details	17/08/2020	Sally Gardner Design and Draft

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

Signed



Thomas Prosser, Planner

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



Lashta Haidari, Acting Development Assessment Manager