

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0013
<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot 76 DP 226445, 40 Towradgi Street NARRAWEENA NSW 2099
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0906 granted for alterations and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Caroline Jenkins Darren Paul McDevitt
<b>Applicant:</b>	Pittwater Design & Draft
<b>Application Lodged:</b>	15/01/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	28/01/2020 to 11/02/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 03 October 2019 under DA2019/0906 for alterations and additions to a dwelling house including a swimming pool.

This Section 4.55 (1a) Modification Application has been submitted seeking to make the following changes:

- Delete Condition No. 7 under DA2019/0906 requiring the construction of a 1.8m high timber privacy screen along the northern elevation of the swimming pool deck; and
- Construct a 1.8m timber fence along the northern side 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

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D15 Side and Rear Fences

Warringah Development Control Plan - E10 Landslip Risk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 76 DP 226445 , 40 Towradgi Street NARRAWEENA NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Towradgi Street, Narraweena. The southern side boundary of the site fronts an unformed portion of Birinta Street, which is currently presented in the form of a concrete pathway.</p> <p>The site is irregular in shape with a frontage of 12.525m along Towradgi Street and a maximum depth of 38.59m along the northern side boundary. The site has a surveyed area of 562.9m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a detached two (2) storey dwelling house and a timber deck located on a sandstone outcrop within the south-eastern rear corner of the site.</p> <p>The site contains landscaped open space within the front</p>

and rear yards and a number of small to medium sized trees throughout the site.

The site experiences a fall of approximately 5m that slopes towards the northern side boundary.

The site is mapped as being located within 'Land Slip Risk Area B' precinct under the provisions of the *Warringah Local Environmental Plan 2011* (WLEP 2011).

#### **Detailed Description of Adjoining and Surrounding Development**

Adjoining and surrounding development is characterised by detached one (1) and two (2) storey dwelling houses.

Map:



#### **SITE HISTORY**

The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Development Application DA2019/0906 for alterations and additions to a dwelling house including a swimming pool approved by Council staff under delegated authority on 03 October 2019.

#### **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 DA2019/0906, 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	<b>Yes</b> The modification, as proposed in this application, 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	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 DA2019/0906.
(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 2011 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.	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	None applicable.
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)	<p><u>Division 8A</u> of the EP&amp;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.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 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 98</u> of the EP&amp;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.</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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 'Matters for Consideration'	Comments
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 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

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who were supportive, subject to conditions.

## 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 19 - Bushland in Urban Areas

The SEPP is not applicable as the bushland is not zoned or reserved for public open space.

### 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 (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

### Comment:

The proposal was referred to Ausgrid who were supportive, subject to conditions.

## 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	5.59m (dwelling)	5.59m (dwelling) 2.1m (fence)*	-	Yes

**Note\*:** The maximum height is taken from the existing ground level.

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	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	5.12m	5.12m (dwelling) Fence - N/A	N/A for new works
B3 Side Boundary Envelope	4m (North)	Within Envelope	Within Envelope	Yes
	4m (South)	Within Envelope	Within Envelope	Yes
B5 Side Boundary Setbacks	0.9m (North)	0m (carport/walkway structure) 0.2m (block retaining wall)	0m (carport/walkway structure) 0.2m (block retaining wall) 0m (fence)	Yes - fences permitted within side setback area previously approved structures supported on merit
	0.9m (South)	3.8m	3.8m	Yes
B7 Front Boundary Setbacks	6.5m (West)	0.03m - 1.96m (carport)	0.03m - 1.96m (carport) - unchanged	N/A
B9 Rear Boundary Setbacks	6m (East)	1.45m (pool decking) 0.1m (block retaining wall)	1.45m (pool decking) 0.1m (block retaining wall) 0.1m (fence)	No (fence) previously approved structures supported on merit
D1 Landscaped Open Space and Bushland Setting	40% (225.16m <sup>2</sup> )	40.61% (228.6m <sup>2</sup> )	40.61% (228.6m <sup>2</sup> )	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	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
C5 Erosion and Sedimentation	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D8 Privacy	Yes	Yes
D15 Side and Rear Fences	No	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

### **B9 Rear Boundary Setbacks**

#### Description of non-compliance

Clause B9 of the Warringah Development Control Plan 2011 (WDCP 2011) stipulates that all development is to be setback at least 6m from rear boundaries. The proposed fence is setback 0.1m from the western rear boundary, which fails to comply with the control. It is noted that the proposed fence will be located on top of the retaining wall approved under DA2019/0906, of which maintains a 0.1m setback from the western rear boundary.

#### 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 proposed modification does not alter the dimensions for landscaped open space approved under DA2019/0906. The approved dimensions are sufficient and appropriate for the subject site.

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

#### Comment:

The proposed fence is confined to the eastern rear boundary and does not detract from a sense of openness within the rear yard.

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

#### Comment:

The proposed fence will alleviate the opportunity for overlooking between the approved pool area at the subject site and the northern adjoining property (42 Towradgi Street). The modified proposal will not detract from the amenity of 42 Towradgi Street, given the fence will not prompt unreasonable overshadowing impacts.

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

Comment:

As noted above, the modified proposal will not alter the approved dimensions for landscape open space. Furthermore, the modified proposal will not alter the siting of the approved pool.

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

Comment:

As noted above, the modified proposal will effectively alleviate opportunities for overlooking between the subject site and northern adjoining property, without compromising the amenity of surrounding properties.

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved. Therefore, the application is supported on merit.

## **D8 Privacy**

This Section 4.55 (1a) Modification proposes to delete Condition No. 7 under DA2019/0906 requiring the construction of a 1.8m high timber privacy screen along the northern elevation of the approved swimming pool deck. In turn, the modified application proposes to construct a 1.8m high timber fence along the northern side boundary. As a result of the site topography, the proposed fence will maintain a maximum height of 2.1m above the existing ground level. This assessment finds that the modified proposal complies with the requirements of this control, given it optimises privacy for the occupants of the subject site and northern adjoining property, without compromising the amenity of adjoining properties.

## **D15 Side and Rear Fences**

### Description of non-compliance

Clause D15 of the WDCP 2011 stipulates that side boundary fences are to be no higher than 1.8m. The proposed fence is a 1.8m structure, however maintains a maximum height of 2.1m as a consequence of the site topography. As such, the modified proposal fails to comply with the requirements of this control.

### Merit consideration

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

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

This assessment finds that the modified proposal improves the urban environment, as the fence will prevent significant overlooking between the approved pool area and 42 Towradgi Street, without compromising the amenity of adjoining properties.

Having regard to the above assessment, it is considered that the applicable objective of the control has

been satisfied. Therefore, the application is supported on merit.

## **E10 Landslip Risk**

The subject site is mapped as being located within the 'Landslip Area B' precinct under the provisions of the WLEP 2011. The Geotechnical Assessment submitted with DA2019/0906 stipulated that the site is suitable for the proposal and that no significant geotechnical hazards will result from the proposal. Subject to compliance with the conditions imposed under DA2019/0906, the modified proposal will appropriately mitigate geotechnical hazards.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect 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 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. Mod2020/0013 for Modification of Development Consent DA2019/0906 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 76 DP 226445,40 Towradgi Street, NARRAWEENA, 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
DA-01 Issue 4 - SITE PLAN	24 October 2019	Pittwater Design and Draft
DA-02 Issue 4 - LOWER FLOOR + SWIMMING POOL PLAN	24 October 2019	Pittwater Design and Draft
DA-05 Issue 4 - East + West ELEVATIONS	24 October 2019	Pittwater Design and Draft
DA-06 Issue 4 - NORTH ELEVATION	24 October 2019	Pittwater Design and Draft

#### b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

### B. Delete Condition No. 7 - Amendments to the approved plans

The following amendments are to be made to the approved plans:

- The swimming pool deck on the northern elevation is to incorporate a solid timber privacy screen with no greater than 25% openings, measured at a height of at least 1.8m above the finished floor level. The privacy screen is to be designed in accordance with all relevant legislative requirements noted within Condition 3 (k) (1) of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

### C. Add Condition - Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	05 February 2020

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

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

**Signed**



**Kye Miles, Planner**

The application is determined on 12/02/2020, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**