

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0423
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 101 DP 1034467, 12 Patey Street DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2019/0291 granted for demolition works and construction of a dwelling house and secondary dwelling
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:	Alan Charles Lewis Elizabeth Dorothy Lewis Sophie Amanda Lewis Joel Alexander Lewis
Applicant:	Joel Alexander Lewis

Application Lodged:	03/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/09/2020 to 25/09/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks the approval for the following works:

- Minor location shift of window W25 on the northern elevation
- Remove window W26 on the first floor of the northern elevation
- Resize in the length of window W19 from 1.08m to 1.89m at the same sill height on the southern elevation
- Change of structural materials on the ground floor to a slab
- Change of cladding from EPS cladding to Fibre cement sheeting is due to compliance with the BCA requirements

- Change of colorbond cladding from timber feature cladding
- Minor Internal modifications.

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 - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 101 DP 1034467 , 12 Patey Street DEE WHY NSW 2099
Detailed Site Description:	<p>The site is legally described as Lot 101 in Deposited Plan 1034467, and known as 12 Patey Street, Dee Why. The site is located within the R2 Low Density residential zone of the Warringahs Local Environment Plan 2011.</p> <p>The property is regular in shape and has an area of 487.5m². The property has a front boundary of 13.88m, a western rear boundary of 13.88m and northern and southern side boundaries of 35.125m. The property displays a moderate slope from the rear to the front boundary.</p> <p>The property forms the front part of a battle-axe shaped allotment with a right-of-carriage way along the southern side of the site. There is a concrete driveway that extends to the rear of the site along the southern boundary. The driveway leads to a concrete parking area for No.12A Paty Street. The drive way comprises 70.2m² of the site area,</p>

therefore the site has an effective area available for development of 417.28m².

The site is currently under construction to build the two storey residential dwelling house, and secondary dwelling approved via consent DA2019/0291.

The streetscape character of Patey Street is varied with residential dwelling housing and Delmar Private Hospital facilities. The residential dwelling houses are a mixture of one and two stories, of varying ages, within landscaped settings. Delmar Private Hospital adjoins the southern side boundary of the subject site and encompasses a relatively large area of land to the south and south-east.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant development applications:

- Development application **DA2019/0291** for the demolition works and construction of a dwelling house and secondary dwelling was approved by Council on the 22/05/2019.
- Development application **DA2018/1832** for the alterations and additions to a dwelling house including secondary dwelling was withdrawn from Council on the 28/01/2019.
- Development application **DA2001/1288** for a new two (2) storey dwelling, a swimming pool and demolition of existing structures was approved by Council on the 30/11/2001.
- Development application **DA6000/8206** for a subdivision of 1 Lot Into 2 Lots was approved by Council on the 12 October 1999.

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 DA2019/0291, 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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact as the works are minor in nature and will result in a negligible additional impact to adjoining properties.
(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 DA2019/0291 as they represent a very minor change to the originally approved 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 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	See discussion on "Notification & Submissions Received" in this report.

Section 4.55(1A) - Other Modifications	Comments
period prescribed by the regulations or provided by the development control plan, as the case may be.	

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)(iia) – 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&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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent/This clause is not relevant to this application.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 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.</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 11/09/2020 to 25/09/2020 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

No referrals were sent in relation to this application

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1004671M_04 dated 4 June 2020). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 1004671M_04 dated 4 June 2020).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	50	Pass

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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	Complies
Height of Buildings:	8.5m	7.6m (RL73.47)	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

No change to the approved built form controls as approved under consent DA2019/0291.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Detailed Assessment

D8 Privacy

The modification seeks to make amendments to the previously approved windows on the northern and southern elevations.

The amendments include the following:

- Minor location shift of window W25 on the northern elevation
- Remove window W26 on the first floor of the northern elevation
- Resize in the length of window W19 from 1.08m to 1.89m at the same sill height on the southern elevation.

The changes are demonstrated in Figure 1 and 2 below.

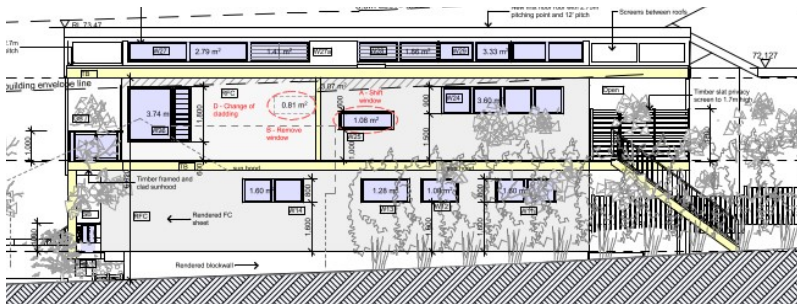


Figure 1: Change in position of W25 and deletion of W26 on the northern elevation.

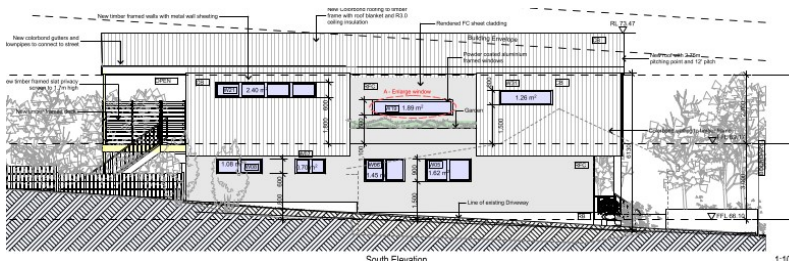


Figure 2: Change in length of W19 on the southern elevation.

The proposed changes to the northern elevation actually improve the potential privacy impacts via the deletion of window W26. Window W25 does not provide any additional unreasonable overlooking than what was previously assessed and approved.

The proposed changes to the windows on the northern elevation do not raise visual privacy issues due to Delmar Private Hospital driveway and parking area adjoining the southern side boundary of the subject site. Therefore, these proposed modified window is acceptable.

As a result, the proposal is considered to optimise privacy through good design and provide a sense of territory and safety for residents, consistent with the outcomes of this development control.

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 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. Mod2020/0423 for Modification of Development Consent DA2019/0291 granted for demolition works and construction of a dwelling house and secondary dwelling on land at Lot 101 DP 1034467, 12 Patey Street, DEE WHY, 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
Site Plan DA01	21/04/2020	Sheralee Hogan
Ground Floor Plan DA02	21/04/2020	Sheralee Hogan
First Floor Plan DA03	21/04/2020	Sheralee Hogan
Ground Garage and Driveway DA04	21/04/2020	Sheralee Hogan
Sections AA DA05	21/04/2020	Sheralee Hogan
East and South Elevation DA06	21/04/2020	Sheralee Hogan

North and West Elevation DA07	21/04/2020	Sheralee Hogan
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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.

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

Signed



Catriona Shirley, Planner

The application is determined on 02/10/2020, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager