

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0335
Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 7 DP 238331, 10 Courtley Road BEACON HILL NSW 2100
Proposed Development:	Modification of Development Consent DA2022/1978 granted for Construction of a dwelling house
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:	Andrew James Iemma Olivia Page Boyle
Applicant:	Rawson Group Pty Ltd

Application Lodged:	28/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	05/07/2023 to 19/07/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application proposes to modify the consent under DA2022/1978 for the construction of a new two-storey dwelling.

The modifications include raising the finished floor level of the proposed ground and first floors, as well as the ridge level, by 300mm.

An additional rainwater tank is also proposed towards the western 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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 7 DP 238331 , 10 Courtley Road BEACON HILL NSW 2100
Detailed Site Description:	<p>The site has an area of 556 m2 which is currently a vacant block of land, with the retaining wall footing constructed (approved per BIC 2022/0078) and temporary timber shoring along the southern and western boundaries. The site is an irregular shaped block with a street frontage of 15.2m along Courtley Road on the northern boundary. The eastern boundary is 33.8m, southern boundary is 30.4m and the western boundary is 19.8m.</p> <p>The site is located within a residential area, where the street has varying housing including both old and new dwellings, a variety of facades, and a mixture of one- and two-story dwellings. The site is zoned R2 - Low Density Residential. The site is currently serviced with water, sewer connection, and electricity.</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 an extensive recent consent history. The prior approvals for dwelling houses on the allotment up until DA2022/1978 have not been acted upon and the current allotment remains vacant. The recent history is as follows:

DA2022/1978 for Construction of a dwelling house was approved on 31/01/2023 and is the original consent to which this subject modification application relates. A condition of consent was recommended that the location of the unauthorised cut and fill works in the north-eastern corner of the site shall be deleted from the application.

Mod2023/0019 for modification of development consent DA2022/0978 was lodged and formally accepted on the 19 January 2023. At the time of assessment this modification application was with Council for assessment. The area of the site that this modification relates to is not part of this subject (DA2022/1978) development application and therefore no contradictory elements will be approved under this dwelling house application.

DA2022/0978 for construction of a retaining wall was determined as approved under delegation by Northern Beaches Council on the 7 October 2022.

PLM2022/0085 Pre-lodgement Meeting was held on 23 May 2022 for Construction of a dwelling house. The notes for this application relate mainly to a new dwelling on site, and not to the existing retaining wall footings or excavation and fill on site. However, they do note that the consent for DA2020/1606 required removal of the fill in the north eastern corner of the site by condition of consent.

BC2022/0078 Building Information Certificate for Footing associated with retaining wall was issued by Council on 4 May 2022. This BIC related to the retaining wall footings along the southern and western boundaries, but not to the fill in the north eastern corner of the site.

BC2021/0304 Building Information Certificate for retaining wall along the western & southern boundaries to satisfy a deferred commencement requirement of Development Consent DA2020/1606

was refused by Council on 28 April 2022. This was refused due to only the footing being constructed on site, and the BIC could not therefore be issued for 'retaining walls' and other works.

DA2020/1606 for Construction of a dwelling house was approved by the Northern Beaches Local Planning Panel on 30/06/2021. During the assessment process of DA2020/1606, concern was raised from the adjoining properties to the east in particular No. 12 Courtley Road. The issues raised in the submission were related directly to the siting of the proposed dwelling and the potential overlooking impacts towards the private open space and western (rear) elevation of the dwelling. The submissions raised questions regarding unauthorised fill being added in the north eastern corner of the site. A condition was therefore included in the consent requesting the removal of fill in the south east corner of the site as to achieve a finished ground level no greater than RL154.5.

A deferred commencement condition was also included in the consent, requiring the application to seek approval for a Building Information Certificate for the existing retaining walls and subsoil drainage along the western and southern boundaries.

DA2020/0585 for Construction of retaining walls and fencing was withdrawn at the request of Council staff on 09/09/2020 by the applicant. This application was for retaining walls on site, including more than what is now proposed in the current application. It was withdrawn due to Council being unable to approve due to concerns with previous unauthorised excavation and fill on site and subsequent potential privacy concerns to neighbours (12 Courtley Road in particular), and due to concerns with the legitimacy of CDC No.1805/19 issued by Accredited Building Certifiers dated 11 February 2020.

PLM2020/0239 Pre-lodgement Meeting was held on 15/10/2020 for Construction of a dwelling house including a swimming pool. The notes for this PLM state that "the levels of the north-east corner of the site should be returned to pre-existing ground levels to ensure the development reduces its visual impact and ensures no adverse privacy to adjoining dwellings".

CDC2020/0112 (Council reference) or Certificate number 1805/19 approved by Accredited Building Certifiers on 11/02/2020 for Construction of a two storey dwelling with attached garage and swimming pool.

CDC2020/0048 Certificate number 1861/19 for Demolition - Certificate number 1861/19 was approved by Accredited Building Certifiers on 23/01/2020.

DA2018/1886 for Demolition works and construction of a dwelling house was approved by the Northern Beaches Local Planning Panel on 17/07/2019. This application appears to have been approved prior to the unauthorised cut and fill taking place on site. Comparison of the survey submitted with this application (37231/D-3d Chadwick Cheng Consulting Surveyors, dated 23.05.2018) with the survey submitted with the current application, demonstrates the difference in levels in the north east corner of the site.

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 DA2022/1978, 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 modification application proposes to increase the finished floor levels, wall height and building height by 300mm. Despite the increase, the proposed building height, building envelope and wall height remain numerically compliant with relevant controls and standards.</p> <p>It is noted that the recent consent history of the site reveals that unauthorised cut and fill works have previously occurred at the north-east boundary of the subject site. Therefore, the modified building height has been compared to the original survey levels of that section of site prior to the cut and fill works in order to determine compliance with the height of buildings standard.</p> <p>Council is therefore satisfied that the proposed modification works are of minimal environmental impact.</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 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 DA2022/1978 for the following reasons:</p> <p>The modification application proposes to increase the finished floor levels, wall height and building height by 300mm. Despite the increase, the proposed building height, building envelope and wall height remain numerically compliant with relevant controls and standards. All remaining built form elements are unchanged from the original consent.</p> <p>The consent authority is therefore 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 DA2022/1978.</p>

Section 4.55(1A) - Other Modifications	Comments
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>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 applications for modification of a development consent, and</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>
<p>(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.</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>

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)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 'Matters for Consideration'	Comments
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 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. No additional information was requested in this case.</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 consent.</p> <p><u>Clauses 62 and/or 64</u> 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 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	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 'Matters for Consideration'	Comments
accordance with the EPA Act or EPA Regs	
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 05/07/2023 to 19/07/2023 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Ru Jiang Wang	14 Courtley Road BEACON HILL NSW 2100

One submission was received during the notification period. It is noted that the objector has raised identical concerns to those raised in their submission to the original application under DA2022/1978. It is advised that this modification relates only to a minor increase in the floor levels and ridge height, as well as a rainwater tank. The dwelling has already been approved under the original application and the merits of that assessment are not relevant to this modification application. Notwithstanding, the matters raised in the submission are addressed as follows:

- **Overshadowing**

Comment

The control requires at least 50% of the required area of private open space of adjoining dwellings to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. It is not considered that the 300mm increase in wall and ridge height will impact the ability of the development to comply with the control nor create an unreasonably adverse impact to the overshadowing arrangement already approved under DA2022/1978, in particular to the property of the objector at No.14 Courtley Road who experience some shadowing at 3pm only and are generally unaffected at 9am and 12pm.

- **Privacy**

Comment

There is no change to the privacy arrangement including windows or private open space areas that was approved under DA2022/1978.

- **As-built development being inconsistent with the plans**

Comment

It is noted the allotment is currently vacant. Should the as-constructed development include works that are not consistent with the approved plans, it is recommended to lodge a complaint through Council's website which can be investigated by Council's Building Compliance team.

- **Compliance with "Section 62 and Section 65 of WLEP 2000"**

Comment

The Warringah Local Environmental Plan 2000 has been superseded by the Warringah Local Environmental Plan 2011 for this subject site. Compliance of the development application is assessed against the most recently updated controls which are the Warringah Local Environmental Plan 2011 and the Warringah Development Control Plan.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2022/1978. The proposed amendments will not change the landscape outcome approved in DA2022/1978, and as such the original conditions remain. No further conditions are imposed.
NECC (Development Engineering)	I have reviewed the proposed modification and subject to the retention of the original engineering conditions, have no objections to the proposal.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are 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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 raised no objections, subject to conditions which have been included in the recommendation of this report.

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.9m	8.2m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	5.6m	5.9m	Yes
B3 Side Boundary Envelope	4m (west)	Within	Within	Yes
	4m (east)	Within	Within	Yes
B5 Side Boundary Setbacks <i>Note: The side boundary setbacks were stated in reverse order under original consent which is now corrected.</i>	0.9m (west)	1.5m (ground) 5.8m (first)	Unaltered	Yes
	0.9m (east)	2.1m (ground) 3.1m (first)	Unaltered	Yes
B7 Front Boundary Setbacks	6.5m	3.5m (garage) 5.7m (first)	Unaltered	No but existing
B9 Rear Boundary Setbacks	6m	2m (ground) 5.3m (first)	Unaltered	No but existing
D1 Landscaped Open Space and Bushland Setting	40%	47%	Unaltered	Yes

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
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	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
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	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. Mod2023/0335 for Modification of Development Consent DA2022/1978 granted for Construction of a dwelling house on land at Lot 7 DP 238331, 10 Courtley Road, BEACON HILL, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

There are no prior modification applications relating to the parent consent for this application (DA2022/1978).

Modified conditions

A. Condition 1 is amended to the extent as follows:

Condition No.1 - Approved Plans and supporting Documentation

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
2-F	12 August 2022	Rawson Homes
3-F	12 August 2022	Rawson Homes
4-F	12 August 2022	Rawson Homes
5-F	12 August 2022	Rawson Homes
6-F	12 August 2022	Rawson Homes
7-F	12 August 2022	Rawson Homes

Engineering Plans		
Drawing No.	Dated	Prepared By
Sheet 1A - 4A	6 June 2023	Nasseri Associates
Sheet 1C - 12C	1 June 2023	Residential Engineering

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



Dean Pattalis, Planner

The application is determined on 04/08/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments