

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0715
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 1 DP 900658, 7 Pavilion Street QUEENSCLIFF NSW 2096
Proposed Development:	Modification of Development Consent DA2018/0612 for alterations and additions to 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:	James David O'Leary Megan Oi Qwan Chan O'Leary
Applicant:	Megan Oi Qwan Chan O'Leary

Application Lodged:	18/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/04/2021 to 04/05/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 23 August 2018 under DA2019/0612 for alterations and additions to a dwelling house. The works at large pertained to an upper floor addition.

This Section 4.55(1A) Modification has been submitted to Council seeking retrospective approval for modifications to the approved development. The modifications sought for retrospective consent are as follows:

- New 1200mm x 500mm window to roof void/storage area on eastern (rear) elevation.
- New fascia detail to conceal the gutter on the eastern elevation.

It is important to note that the provisions of Section 4.55 of the Environmental Planning and Assessment Act 1979 can be used to modify a development consent in the circumstance where the works subject to the Section 4.55 Modification had already been carried out. This is addressed within the NSW Land and Environment Court Case of *Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240*.

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 Local Environmental Plan 2011 - 5.10 Heritage conservation
 Warringah Development Control Plan - B13 Coastal Cliffs setback
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 1 DP 900658 , 7 Pavilion Street QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-eastern side of Pavilion Street.</p> <p>The site is irregular in shape with an angled frontage of 17.33m along Pavilion Street and a depth of 43.18m along the northern boundary and 50.54 along the southern boundary. The site has a surveyed area of 910.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site falls by an average of 18% from west to east, before a sheer cliff into the water. The lower portion of the</p>

site below the coastal cliff is identified as Heritage Conservation Area No. C13 'Coastal cliffs' pursuant to the WLEP 2011.

The site has some planter boxes, shrubbed areas and a small garden area along the southern boundary.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by other dwelling houses with multiple different architectural styles, residential flat buildings and dual occupancies.

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:

- DA2010/1007 - Alterations & additions to a dwelling house approved 28 July 2010.
- DA2010/1194 - Alterations and additions to a dwelling house, construction of a swimming pool and new front fencing approved 12 October 2010.
- DA2017/0040 - Alterations and Additions to existing dwelling house (withdrawn).
- DA2018/0612 - Alterations and additions to a dwelling house approved 23 August 2018.
- DA2018/1892 - Demolition works and construction of a swimming pool approved 18 March 2019.
- Mod2019/0173 - Modification of Development Consent DA2018/0612 granted for alterations and additions to a dwelling house approved 31 May 2019.

Application History

The Assessment Officer undertook the following site inspections:

- Site visit at the subject site on 1 April 2021.
- Site visit at 9 Pavilion Street to examine the modified proposal's impact upon views.
- Site visit at 4/4 Pavilion Street to examine the modified proposal's impact upon views.

The applicant failed to provide photographic evidence of the Notification Sign being in place during the initial Notification Period. As such, the application was re-exhibited for 14 days. The applicant was able to provide photographic evidence of the sign being in place during the second Notification Period.

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 DA2018/0612, 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> <ul style="list-style-type: none"> • The envelope and footprint of the dwelling remains unchanged. • The modified development does not give rise to additional amenity impacts.
(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 DA2018/0612 for the following reasons:</p>

Section 4.55(1A) - Other Modifications	Comments
	<ul style="list-style-type: none"> The land use remains consistent with the approved development. The material impacts of the modified proposal are consistent with the approved and subsequently modified development.
<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 2000 and 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
<p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p>	<p>See discussion on “Environmental Planning Instruments” in this report.</p>
<p>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</p>	<p>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.</p>
<p>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</p>	<p>Warringah Development Control Plan 2011 applies to this proposal.</p>
<p>Section 4.15 (1) (a)(iia) – Provisions of any planning agreement</p>	<p>None applicable.</p>

Section 4.15 'Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)</p>	<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>Clause 50(1A)</u> of the EP&A Regulation 2000 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 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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&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&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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<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</p>

Section 4.15 'Matters for Consideration'	Comments
	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 (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 20/04/2021 to 04/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Miss Estelvia Zappia	4 / 4 Pavilion Street QUEENSCLIFF NSW 2096
Ms Elyane Joy Messara	9 Pavilion Street QUEENSCLIFF NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- **View Loss**

Comment:

Concern is raised of the modified proposal's impact upon existing views.

In response to this matter, a detailed assessment has been provided against the provisions of Clause D7 of the WDCP 2011 and the planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*. The assessment concludes that the development's impact upon views is reasonable, given the qualitative extent of the view impact is negligible.

- **Pergola not Construction in accordance with previous consents**

Comment:

This component has not been approved under the development. This issue has been raised with Council's Compliance Department by an owner of a neighbouring property. The Compliance Department will undertake a separated investigation of this matter. Conditions have been imposed to ensure this consent only encapsulates the fascia detail and window on the upper floor.

- **Changes to cliff facing facade that are contrary to previous consents**

Comment:

As noted above, conditions have been imposed to ensure this consent only encapsulates the fascia detail and window on the upper floor. Any unauthorised works will be investigated by Council's Compliance Department.

- **Fascia Detail**

Comment:

Concern has been raised of the fascia detail that has been constructed to conceal the gutter.

In response to this matter, it is noted that the works do not exacerbate the bulk and scale of the dwelling and do not result in unreasonable amenity impacts (i.e. shadowing impacts, privacy impacts, view loss). In this regard, this component of the modification is considered to be acceptable.

- **Non-compliance with Clause B13 of the WDCP 2011**

Comment:

This matter has been discussed in detail within the section of this report relating to Clause B13 of the WDCP 2011. Overall, the assessment includes that the modified works are consistent with the objectives of the control and therefore, are worthy of Council support.

Concluding Remarks

The matters raised within the objections have been appropriately addressed throughout the report. The concerns do not warrant refusal of this application.

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 19 - Bushland in Urban Areas

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

- (c) the need to retain any bushland on the land,*
- (d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

Comment:

The modified proposal does not result in site disturbance or the removal of native vegetation. Furthermore, the modified proposal is confined to private property and does not impact upon adjoining public open space. Therefore, Council can be satisfied that the modified development is consistent with SEPP 19.

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

The site is located within the Coastal Use Area and Coastal Environment Area pursuant to the SEPP (Coastal Management) 2018. Accordingly, the proposal is considered against Clauses 13, 14 and 15 of the Policy as follows:

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 modified development relates to minor cosmetic changes to the dwelling house and does not have an adverse impact on the matters referred to in subclause (1).

- (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:

Given the minor nature of the modified development, it is concluded that the modified proposal is designed, sited and will be managed to avoid an adverse impact upon the matters referred to in subclause (1).

14 Development on land within the coastal use area

- (1)
 - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate*

- that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

Noting that the foreshore is located to the east, the minor changes will not result in overshadowing to the foreshore. In relation to Aboriginal heritage, it is noted that the site is subject to previous disturbance and that the minor changes will not impact upon Aboriginal cultural heritage, practices and places. In relation to views, this matter is discussed in detail within the section of this report relating to Clause D7 of the WDCP 2011. The assessment concludes that the qualitative extent of view loss from adjoining properties is negligible. Furthermore, the modified proposal is confined to the existing building and does not alter access to or along the foreshore. The minor changes will not have an adverse impact upon the adjoining heritage conservation area.

Overall, the modified proposal does not have an adverse impact upon the matters referred to in Clause 14.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Based on the minor nature of the modifications seeking retrospective consent, Council can be satisfied that the modified development is not likely to cause increased risk of coastal hazards on the site or surrounding properties.

Concluding Remarks

Having regard to the above assessment, it is concluded that the modified proposal is consistent with the relevant matters prescribed within SEPP (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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m (as approved through Mod2019/0173)	no change to building height	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

5.10 Heritage conservation

The lower portion of the site below the coastal cliff is identified as Heritage Conservation Area No. C13 'Coastal cliffs' pursuant to the WLEP 2011. Therefore, the objectives of this clause must be considered prior to granting consent. An assessment against the objectives is provided below:

- (a) to conserve the environmental heritage of Warringah,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Comment:

The subject dwelling is not listed as a heritage item. The modified works pertain to cosmetic changes to the approved dwelling and do not detract from the scenic qualities of the coastal cliffs. Therefore, Council can be satisfied that the modified proposal is consistent with the objectives of Clause 5.10 of the WLEP 2011.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	8.2m	no new walls	Yes - this s4.55(1A) complies
B3 Side Boundary Envelope	5m then projected at 45 degrees (north)	Within envelope	Within envelope (fascias can enroach up to 675mm from side boundaries)	Yes
	5m then projected at 45 degrees (south)	Breach of 0.6m (height) for 9.7m (length)	no further breach	Yes - this s4.55(1A) complies
B5 Side Boundary Setbacks	0.9m (north)	no change	no change	Yes
	0.9m (south)	1.1m - 1.5m	no change	Yes
B7 Front Boundary Setbacks	6.5m	7.1m	no change	Yes
B13 Coastal Cliffs Setback	Refer to Figures in control	Outside of Coastal Cliff	Outside of Coastal Cliff Setback	No

		Setback		
D1 Landscaped Open Space and Bushland Setting	40%	405.5sqm (45%)	no change	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
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B13 Coastal Cliffs setback	No	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
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	No	Yes

Detailed Assessment

B13 Coastal Cliffs setback

Description of inconsistency

The control requires development to be located westward of the coastal cliff building line. The new

fascia detail encroaches beyond the coastal cliff line, which does not satisfy the prerequisite.

Merit consideration:

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

- *To limit the bulk and scale of highly exposed cliff top development.*

Comment:

The new fascia detail conceals the gutter line and does not exacerbate the bulk and scale of the development along the cliff top, given the envelope and footprint of the approved development will remain unaltered.

- *To maintain the scenic quality of the cliffs.*

Comment:

As noted above, the fascia detail does not exacerbate the bulk and scale of the approved development. In this regard, the modified development will not detract from the scenic qualities of the cliff top.

- *To ensure views are maintained from the land to which the Coastal Cliffs setback applies.*

Comment:

The modified development's impact upon views has been considered in accordance with the provisions of Clause D7 of the WDCP 2011 and the planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*. This assessment concludes that the qualitative extent of the view impact is negligible.

Concluding Remarks

Having regard to the above assessment, it is concluded that the modified development satisfies the objectives of this control. Therefore, the modified proposal is supported on merit in this particular circumstance.

D7 Views

Council received 2 submissions from properties 9 Pavilion Street and 4/4 Pavilion Street raising concern of the modified proposal's impact upon views. 9 Pavilion Street directly adjoins the site to the north, whilst 4/4 Pavilion Street is located on the top floor of a residential flat building located on the opposite side of the street to the east.

In response to these submissions, the Assessment Officer undertook site visits at the respective properties with the owners being in attendance.

Merit consideration

The development is considered against the underlying objectives of the control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

“The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured”.

Comment:

9 Pavilion Street

The views from No. 9 are whole views of Freshwater Beach, including the land-water interface and surrounding residential development. The views have no natural or built obstructions from all three levels of the dwelling. These views at 180 degree views.

4/4 Pavilion Street

There are three separate view corridors that can be obtained from this particular unit. These are as follows:

- One corridor includes water views, which include portions of the rock outcrops on the northern headland of Freshwater Beach. This corridor is located to the north-east of the unit. This corridor is obstructed by existing development located along the coastal cliff.
- One corridor includes water views, including the land-water interface, of Manly Beach. This corridor includes the Norfolk Pine trees located along the beach foreshore and a portion of North Head. This corridor is partially obstructed by existing development located between the unit and Manly Beach. This corridor is located to the south.
- One corridor includes district views towards Manly Dam and surrounding bushland. This corridor contains partial obstructions by existing development. This corridor is located towards the west.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment:

9 Pavilion Street

The views from No. 9 are obtained across the rear boundary. The views can be obtained from standing and sitting positions on all levels of the dwelling. The views in question are shown in Figures 1, 2 and 3.

Figure 1: lower ground floor standing



Figure 2: ground floor standing



Figure 3: first floor standing



4/4 Pavilion Street

The views from No. 4/4 are as follows:

- Views towards Freshwater are obtained from a standing position through a kitchen window. This view is obtained over a front boundary. This view is depicted in Figure 4.
- Views towards Manly are obtained from a standing position through a bedroom window. This view is obtained over a rear boundary. This view is depicted in Figure 5.
- Views towards Manly Dam are obtained from a standing position through a kitchen window. This view is obtained over the northern side boundary. This view is depicted in Figure 6.

Figure 4: living room standing



Figure 5: bedroom standing



Figure 6: kitchen standing



3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment:

9 Pavilion St

The fascia detail is located to the south of the property and does not obscure the 180 degree views. An image of the fascia detail when viewed from 9 Pavilion Street is depicted in Figure 7 below.

Figure 7: fascia detail subject to this modification when viewed from 9 Pavilion Street



Given the modified works do not obstruct the existing views, the qualitative extent of the view impact from No. 9 is considered to be negligible.

4/4 Pavilion Street

The fascia detail is located below the ridge line of the subject dwelling and therefore, does not further impact the views towards Freshwater from No. 4/4. It should also be noted that the other corridors are not impacted by the modified development. In this regard, the qualitative extent of the view impact from

No. 4/4 is considered to be negligible.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment:

The modified development does not have an adverse view impact upon adjoining properties and therefore, the modified proposal is found to be acceptable in this regard.

Concluding Remarks

The information submitted with the application, in conjunction with site visits at the subject site and Nos 4/4 and 9, has allowed Council to accurately consider the extent of the view loss for surrounding properties. Council is satisfied that the development achieves consistency with the objectives of this control and the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

E10 Landslip Risk

The site is situated in Area B and Area C on Councils Landslip Risk Map and a geotechnical assessment of site conditions is normally required to accompany the application. However, in this instance, as the works are very minor and relate only to a window and fascia detail to conceal a gutter, a geotechnical report is not considered necessary.

When considered against the objectives of this control, it is noted as follows:

- *To ensure development is geotechnically stable.*

Comment:

The works do not necessitate ground disturbance and are not likely to exacerbate landslip hazards.

- *To ensure good engineering practice.*

Comment:

Conditions imposed under the original development consent will ensure the works comply with relevant BCA and Australian Standard provisions.

- *To ensure there is no adverse impact on existing subsurface flow conditions.*

Comment:

The works do not increase impervious areas on the site and do not require excavation. Therefore, the proposal will not have an adverse impact on existing subsurface flow conditions.

- *To ensure there is no adverse impact resulting from stormwater discharge.*

Comment:

The works will not increase impervious areas on the site and therefore, will not increase stormwater loading onto adjoining properties.

Concluding Remarks

Based on the above assessment, it is concluded that the proposal achieves the objectives of the 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. Mod2020/0715 for Modification of Development Consent DA2018/0612 for alterations and additions to a dwelling house on land at Lot 1 DP 900658,7 Pavilion Street, QUEENSCLIFF, subject to the conditions printed below:

A. Add Condition No.1B - 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
DA07	unknown	Corben Architects
DA11	unknown	Corben Architects
DA22	unknown	Corben Architects

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. Add Condition 2A - Works approved under this Consent

This Section 4.55(1A) Modification only approves the following works:

- Fascia detail to conceal the gutter on the eastern elevation.
- New 1200mm x 500mm window on the eastern elevation of the first floor.

Any additional works that are contrary to previous consents on the land are not approved under this application.

Reason: To ensure consistency with the terms of this consent.

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

Signed



Thomas Burns, Planner

The application is determined on 06/05/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments