

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0313
----------------------------	--------------

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 15 DP 758566, 146 Melwood Avenue KILLARNEY HEIGHTS NSW 2087
Proposed Development:	Modification of consent to DA2006/0101 granted 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:	Jiang Lin
Applicant:	Jiang Lin

Application lodged:	14/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

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 15 DP 758566 , 146 Melwood Avenue KILLARNEY HEIGHTS NSW 2087
Detailed Site Description:	The site has a street frontage of 18.2 metres (m) to Melwood Avenue, with a depth of 38.4m, and an area of 702.9 square metres (sqm). The site is on the southern side of Melwood Avenue has a moderate slope away from the road. The elevation of the site drops from about 113.4m AHD at the road frontage to 105.3AHD at the rear of the site. The property has a landscaped setting and currently contains a dwelling house graduated over four (4) levels with a pool in the rear yard. Surrounding development consists of detached dwelling houses in a landscaped setting. There is a mix of old housing stock and new large contemporary homes. The land is not subject to bushfire hazard and is within Landslip area "B".

Map:



SITE HISTORY

Development Application No.DA2006/0101 for "alterations and additions following part demolition of the existing dwelling", was approved by Council on 24 March 2006. This application was modified under MOD2006/0101/1 and is the parent consent of the current modification.

Development Application No.DA2007/1037 for construction of a swimming pool and rainwater tank was approved by Council on 10 December 2007.

Development Application No.DA2008/1324 for alterations and additions to an existing dwelling was approved by Council on 23 October 2008.

Development Application No.DA2008/1784 for construction of a timber deck and fencing was approved by Council on 6 February 2009. (This application was modified under MOD2008/0348)

Development Application No.DA2010/559 for alterations and additions to a dwelling house and construction of a garage was approved by Council on 10 May 2010.

Modification Application No.MOD2017/0205 was withdrawn by the applicant.

Building Certificate No.BC2017/0092 to regularise unauthorised works within the building was lodged with Council on 7 August 2017. The current modification application relates to this Building Certificate seeking retrospective approval.

PROPOSED DEVELOPMENT IN DETAIL

The modification involves the following changes to the approved plans:

- combine bedrooms "2" and "3" into a single bedroom with new bathroom and wardrobe.
- reconfigure bedroom "4" to become bedroom "3" with new bathroom and wardrobe.

- remove internal wall for living area.
- new storage room under garage area with access doorway.
- new wet area adjacent laundry.
- reposition wall between laundry and storeroom access.
- new wet bar to the pool rumpus room.
- replace existing external door to pool area with sliding door.
- install glass block window to storeroom under garage area.
- install side access door to storeroom under garage area.

Note: The modification works are within the existing building footprint and exterior walls. The modification is associated with Compliance action taken to regularise works completed without the required consent.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 DA2006/0101, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same	There can be retrospective consent for unauthorised building work as established by the NSW Land & Environment Court in <i>Windy Dropdown Pty Ltd v Warringah</i>

Section 96(1A) - Other Modifications	Comments
development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<i>Council (2000) 111 LGERA 299.</i> The principle being that a pre-existing development consent can be modified to grant consent retrospectively to works that have already been carried out. The test under Section 96 being that the development remains "substantially the same". 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 DA2006/0101.
(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 modification 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.	No submissions have been received for the modification.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any	Warringah Development Control Plan applies to this

Section 79C 'Matters for Consideration'	Comments
development control plan	proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested. <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. <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. <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. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the modification to the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed modified development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of

Section 79C 'Matters for Consideration'	Comments
	the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed modification of the development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the modification application in the public interest, subject to conditions for BCA compliance and ensuring the use is maintained as a single dwelling house as approved.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the Building Code of Australia.
Environmental Compliance (Building Control)	Building Control has no objection to the application. Building Control is in receipt of a <i>Building Application</i> and the relevant reports required to address the subject works undertaken without the relevant prior consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposed modification was referred to <i>Ausgrid</i> . 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, 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

The scope of modification work does not trigger BASIX. Therefore, no further assessment of BASIX is required.

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 modification 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.

Other Service Authorities

The application was not requires to be referred to the *Roads and Maritime Service* and no other Service Authority infrastructure referral issues are raised pursuant to the SEPP.

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

Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	9.8m	No change	No (Existing - As approved)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	8.9m	No change	No (Existing as approved)
B3 Side Boundary Envelope - West	45 degrees at 4m	Breach of envelope (1.2m encroachment)	No change	No (Existing as approved)
B3 Side Boundary Envelope - East	45 degrees at 4m	Within envelope	No change	No (Existing as approved)

B5 Side Boundary Setbacks - West	0.9m	3.5m (Wall)	No change	Yes
B5 Side Boundary Setbacks - East	0.9m	1.0m - 3.9m (Wall)	No change	Yes
B7 Front Boundary Setbacks	6.5m	8.4m (Dwelling wall) 6.5m (Garage wall)	No change	Yes
B9 Rear Boundary Setbacks	6.0m	4.2m (Pool) 12.6m (Dwelling wall)	No change	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (280sqm)	43% (308sqm)	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
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
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
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

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

Warringah Section 94A Development Contribution Plan

Section 94 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 Modification Application No. Mod2017/0313 for Modification of consent to DA2006/0101 granted for alterations and additions to a dwelling house on land at Lot 15 DP 758566, 146 Melwood Avenue, KILLARNEY HEIGHTS, subject to the conditions printed below:

A. Add Condition No."1A - Modification of Consent - Approved Plans and Supporting Documentation", to read as follows:

"1A. Modification of Consent - 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
1/7 Section 96 Site Plan	26.6.2017	M & M Survey
2/7 Section 96 Main Floor and Garage Plan	26.6.2017	M & M Survey
3/7 Section 96 Ground Floor Plan	26.6.2017	M & M Survey

4/7 Section 96 Lower Floor Plan	26.6.2017	M & M Survey
5/7 Section 96 Side Elevation	26.6.2017	M & M Survey
6/7 Section 96 Front and Rear Elevation	26.6.2017	M & M Survey

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. (DACPLB01)"

B. Add Condition No."1B - Approved Land Use", to read as follows:

"1B. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house:

"dwelling house means a building containing only one dwelling."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent."

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

Signed



Alex Keller, Principal Planner

The application is determined under the delegated authority of:



Steven Findlay, Manager Development Assessments

ATTACHMENT A

Notification Plan	Title	Date
 2017/519650	Plans - Notification	07/11/2017

ATTACHMENT B

Notification Document	Title	Date
 2017/534763	Notification Map	21/12/2017

ATTACHMENT C

Reference Number	Document	Date
 2017/519650	Plans - Notification	07/11/2017
 2017/519582	Report - Engineering Structural Certification	07/11/2017
 2017/519601	Plans - Survey with Report	07/11/2017
 2017/519675	Plans - Structural	07/11/2017
 2017/520087	Plans - Master set	12/12/2017
 2017/519569	Report – Statement of Environmental Effects	12/12/2017
 MOD2017/0313	146 Melwood Avenue KILLARNEY HEIGHTS NSW 2087 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	14/12/2017
 2017/518658	DA Acknowledgement Letter - Jiang Lin	14/12/2017
 2017/519361	Applicant Details	14/12/2017
 2017/519346	Modification Application Form	14/12/2017
 2017/520066	Plans - External	14/12/2017
 2017/529094	Building Assessment - Fire and Disability upgrades - Assessment Referral - Mod2017/0313 - 146 Melwood Avenue KILLARNEY HEIGHTS NSW 2087 - PH	18/12/2017
 2017/529712	Compliance Management - Assessment Referral - Mod2017/0313 - 146 Melwood Avenue KILLARNEY HEIGHTS NSW 2087	18/12/2017
 2017/534763	Notification Map	21/12/2017
 2017/534773	Notification Letter - 6	21/12/2017
 2017/534780	DA Acknowledgement Letter (not integrated) - Jiang Lin	21/12/2017
 2018/015080	Obsolete	06/01/2018
 2018/028902	Building Assessment Referral Response	09/01/2018
 2018/106602	Compliance Management Referral Response	09/02/2018
 2018/138602	Working Plans	27/02/2018