

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2024/0409
<b>Responsible Officer:</b>	Michael French
<b>Land to be developed (Address):</b>	Lot 10 DP 1257419, 25 Loch Street FRESHWATER NSW 2096 Lot 7 DP 14040, 23 Loch Street FRESHWATER NSW 2096
<b>Proposed Development:</b>	Modification of Development Consent DA2023/0185 granted for Demolition work and alterations and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Applicant:</b>	Bruce Stafford & Associates Pty Ltd

<b>Application Lodged:</b>	30/07/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify DA2023/0185 by removing Deferred Commencement Condition 2 and imposing two new Conditions of Consent under the "General Conditions" as replacement.

This modification request stems from the following issues faced by the applicant:

1. Deferred Commencement Condition 2 requires registration of the approved subdivision for the Cabana and Swimming Pool (DA2023/0185).
2. Registration of the subdivision cannot occur until building works are completed to provide required services for Lots 101 and 102.
3. Building works cannot commence until a Construction Certificate is issued.

4. A Construction Certificate cannot be issued until the boundary adjustment registration is approved.

This creates a circular problem: registration requires building works, building works require a Construction Certificate, and the Construction Certificate requires registration.

The applicant provided the following advice from their architect to support this request. This is summarised below:

- *Working with a surveyor to comply with the deferred commencement condition.*
- *Subdivision Certificate Application to Council must demonstrate independent services for each Lot.*
- *All services will be independent except the sewer inspection chamber, which will be within the new boundary of Lot 102 after the boundary rearrangement.*
- *Lodged a Section 73 application with Sydney Water to:*
  - *Remove the existing sewer pipe and replace it with a PVC pipe encased in concrete.*
  - *Extend the sewer line within the new boundary of Lot 101.*
- *Sydney Water works are scheduled after demolition and excavation in November.*
- *Construction of the pool must precede the house due to site slope and street access.*
- *Current conditions prevent commencement of building work and sewer extension without a Construction Certificate.*
- *Request to amend the consent conditions to allow work to proceed.*

The applied conditions of consent are deemed sufficient in addressing the issue while preserving the requirements outlined in the parent consent condition.

The Northern Beaches Community Participation Plan (CPP) delineates the parameters for the public exhibition of development activities. Certain developments, characterised by their modest scale and inherent nature, are exempt from the exhibition requirement. Specifically, development applications (DAs) falling within this category encompass internal alterations to non-heritage dwelling houses, devoid of external modifications. In the context of the current Modification Application, which exclusively seeks approval for the alteration of two (2) conditions of consent, adherence to the Northern Beaches Community Participation Plan dictates that no notification for public exhibition is required in this particular instance.

## **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

<b>Property Description:</b>	<p>Lot 10 DP 1257419 , 25 Loch Street FRESHWATER NSW 2096</p> <p>Lot 7 DP 14040 , 23 Loch Street FRESHWATER NSW 2096</p>
<b>Detailed Site Description:</b>	<p>The subject sites consists of two (2) allotments located on the eastern side of Loch Street: No. 23 and No. 25 Loch Street, near the intersection of Wyadra Avenue and Bath Avenue.</p> <p>The site is irregular in shape with a frontage of 12.575m along Loch Street for No. 23 and 15.2m along Loch Street for No. 25. The depth for both lots is 50.34m. The site has a surveyed area of 633sqm for No. 23 and 750.5 sqm for No. 25.</p> <p>The sites are located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011.</p> <p>The sites have a steep downward slope toward the rear.</p> <p>The sites do not contain any details of any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is predominantly characterised by detached dwelling houses on the eastern side of Loch Street.</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 the following relevant history:

DA2023/0185 dated 10 August 2023- Demolition work and alterations and additions to a dwelling house including a swimming pool.

## 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 DA2023/0185, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The 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 DA2023/0185 for the following reasons:  - The proposed modifications do not alter the qualitative or quantitative aspects of the approved development under the parent consent.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation 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.	The application was not notified as the details of the proposal did not warrant notification.

#### 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 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;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>Clauses 36 and 94</u> of the EP&amp;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&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;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&amp;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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 'Matters for Consideration'	Comments
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 application was not notified.

## REFERRALS

No referrals were sent in relation to this application

## 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 (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

There are no changes proposed to the approved Principal Development Standard calculations. No further assessment is required.

## Warringah Development Control Plan

### Built Form Controls

There are no changes proposed to the approved Built Form Control calculations. No further assessment is required.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	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. Mod2024/0409 for Modification of Development Consent DA2023/0185 granted for Demolition work and alterations and additions to a dwelling house including a swimming pool on land at Lot 10 DP 1257419,25 Loch Street, FRESHWATER, Lot 7 DP 14040,23 Loch Street, FRESHWATER, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
Mod2024/0409	The date of this notice of determination	Modification of Development Consent DA2023/0185 granted for Demolition work and alterations and additions to a dwelling house including a swimming pool.

## Modified conditions

### A. Delete Condition 2- Registration of Land Title

**B. Add Condition 12A- Pre-allocated Plan Number (PPN) to read as follows:**

The Applicant must obtain a Pre-allocated Plan Number (PPN) for Proposed Lots 101 and 102 in the approved plan of proposed subdivision of Lot 7 DP 14040 and Lot 10 DP 1257419 prior to the issuance of the Construction Certificate.

Reason: Statutory requirement

**C. Add Condition 28A- Registration of Land Title to read as follows:**

The Applicant must register the Proposed Lots 101 and 102 in the approved plan of proposed subdivision of Lot 7 DP 14040 and Lot 10 DP 1257419 with the NSW Land Registry Services (Land Titles Office) to legally create the land prior to the issuance of the Occupation Certificate. Compliance details are to be submitted to the Principal Certifying Authority before the Occupation Certificate is issued.

Reason: Statutory requirement.

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

**Signed**



**Michael French, Planner**

The application is determined on 15/08/2024, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**