

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0133
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Responsible Officer:	Kelsey Wilkes
Land to be developed (Address):	Lot 50 DP 7532, 7 Kanangra Crescent CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA75/2016 granted for alterations and additions to an existing dwelling house including swimming pool
Zoning:	Manly LEP2013 - 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:	Bryn Barry Atmore Rebeka Freckleton
Applicant:	Space Landscape Designs Pty Ltd

Application Lodged:	09/04/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/04/2020 to 11/05/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent to modify development consent DA 75/2015 for alterations and additions to an existing dwelling house including swimming pool with timber deck, timber stairs, retaining wall, fence and pergola at the rear of the property. The proposed modifications include the following:

- Relocation of swimming pool and associated decking towards the west
- Relocation of timber stairs to be adjacent to the site's northern side boundary
- Removal of louvered vergola
- Relocation of retaining walls

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

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 50 DP 7532 , 7 Kanangra Crescent CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment legally identified as Lot 50 within DP 7532 and is located between Kanangra Crescent and Heaton Avenue, Clontarf. The site is irregular in shape with a frontage of 24.34m along Kanangra Crescent and a secondary frontage of 16.6m along Heaton Avenue. The site has a surveyed area of 792.2m². The site is located within the R2 Low Density Residential zone and accommodates an existing two storey dwelling and detached garage with vehicular access gained via the Kanangra Street frontage. The site falls steeply from east to west (front to rear) by approximately 11 meters. Landscaping on site is characterised by native and non-native vegetation, small to medium shrubs and rock outcrops.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by predominantly two and three storey residential dwellings of varying ages and architectural styles. Due to the topography of the land, many sites within the surrounding area enjoy views towards the west and south west to Fisher Bay and across to the Spit Bridge.

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:

10.2016.75.1

Alterations and additions to an existing dwelling house including swimming pool with timber deck, timber stairs, retaining wall, fence and pergola at the rear of the property
Approved 29 March 2016

10.2011.255.2

Section 96 to modify approved Demolition of existing double carport, construction of a new double carport and alterations and additions to an existing garage - involving the conversion of the carport to a garage and deletion of condition no ANS01 being the enclosure of carport is not permitted - Part 2
Approved 21 December 2012

10.2011.255.1

Alterations and additions to existing dwelling including demolition of existing carport, new double garage and access stairs
Approved 23 September 2011

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 DA 75/2015, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA 75/2015 for the following reasons: • The proposal substantially relates to the relocation of the previously approved swimming pool • The proposal includes the removal of structures approved under the original consent • The proposed modification will result in substantially the same development as that originally approved Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is

Section 4.55 (2) - Other Modifications	Comments
	concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA 75/2015 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly 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.	See discussion on "Notification & Submissions Received" in this report.

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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not

Section 4.15 'Matters for Consideration'	Comments
	considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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>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. <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. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <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. <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. <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.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social

Section 4.15 'Matters for Consideration'	Comments
	impact in the locality considering the character of the proposal. (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.
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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the original application (DA 75/2015) that included a certificate (prepared by Matthew Toghil of Bushfire Consultancy Australia, dated 3 March 2015) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of the original consent which will be applied in conjunction with this consent.

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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr John Pens	1 / 51 Peronne Avenue CLONTARF NSW 2093

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

- Traffic Management

The matters raised within the submissions are addressed as follows:

- **Traffic Management**
The objector raises concern regarding dangerous traffic conditions along Kanangra Crescent as a result of construction trucks. The objector requests that a traffic management plan be put in place during construction or that all traffic be required to park on Heaton Avenue rather than Kanangra Crescent.
Comment:
The application was referred to Council's Development Engineer who provided comments and also considered the concern mentioned above. As a result, it is required that the applicant / certification authorisation manages the traffic on Heaton Avenue during construction. A condition has been included within this consent to ensure the appropriate traffic management method is employed in accordance with the RMS standard.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The applicant proposed to relocate a swimming pool in the rear of the property. Development Engineering has no objection to the application. In relation to the development location, the applicant/ Certification Authorisation shall manage the traffic on Heaton Avenue during the construction. A condition is added to ensure the appropriate traffic management method must be employed in accordance with RMS standard.

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.

Manly Local Environmental Plan 2013

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

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 792.2m ²	Requirement	Approved	Proposed	Complies
4.1.4.1 Street Front Setbacks	6m	23.6m	29.3m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (435.7m ²)	57% (447.52m ²)	57% (447.52m ²)	Yes (unchanged)
	Open space above ground 25% of total open space (111.88m ²)	7% (34m ²)	8% (36m ²)	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (156.6m ²)	62% (273.56m ²)	65% (292.3m ²)	Yes
	3 native trees	3 trees	3 trees	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2.67m	1.115m	No
	1m curtilage/1.5m water side/rear setback	North side: 1.015m curtilage	North side: 1.015m curtilage 1.9m water	Yes
		South side: 0m curtilage 2.985m water (closest boundary)	South side: 1.1m curtilage 3m water	Yes
		Rear:	Rear:	No

		5.74m	1.4m curtilage 1.5m water	
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

The proposal seeks to decrease the setback of the swimming pool from the rear boundary. The setback of the swimming pool was approved at 5.74 meters. This modification proposes a new setback of 1.4 meters from the pool curtilage and 1.5 meters from the water.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

While the setback does not comply, the proposed location of the swimming pool is not inconsistent with the existing streetscape character, the desired spatial proportions, street edge or landscape character along Heaton Avenue as adjoining properties including numbers 1 and 2 Kanangra Crescent and 2 Heaton Avenue all feature swimming pools with similar setbacks and within the same location. Further to this, the proposal allows for sufficient setbacks to both side boundaries and incorporates landscaping to enhance the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

As the non-compliance relates to an in-ground swimming pool, there will be no impacts to solar access, view sharing or traffic conditions. As mentioned above, the proposal is consistent with and enhances the streetscape character and provides for sufficient spatial separation. Privacy will remain at a high level due to the incorporation of plant screening. The swimming pool's height above ground level has also been reduced as part of this modification and this assists with increasing the level of privacy as a result of its use.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

It is considered that the swimming pool has been designed and sited appropriately in response to the existing site.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed modified location of the swimming pool allows for an increase to landscaped open space on site and the incorporation of landscape works will assist to enhance the streetscape and screen built form.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

A Bushfire Report was provided with the original development application and recommendations within this report will be applied in conjunction with this consent.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.9 Swimming Pools, Spas and Water Features

The proposal seeks to reduce the previously approved height of the swimming pool above natural ground level from 2.67m to 1.115m.

The clause states that swimming pools must not be elevated more than 1m above natural ground level and that consideration of any exception to exceed the height above ground must demonstrate that any swimming pool and their curtilage more than 1m above natural ground level:

i) would not detract from the amenity or character of the neighbourhood;

Comment:

While the height above ground level remains non-compliant, this is a significant reduction from what was previously approved under DA 75/2015 and is therefore an improved outcome. The swimming pool is consistent with swimming pool development within adjoining and surrounding sites and will achieve compatibility with the neighbourhood. Screen planting has been incorporated into the design and will assist in screening the pool from the streetscape. It is considered that amenity will be improved as the height above ground level is significantly reduced, resulting in an increased level of privacy and solar access.

ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing

Comment:

The proposed swimming pool measures a maximum height of 1.115 meters above existing ground level at the northern side boundary, with the minimum curtilage setback from this boundary being 1.015. While this does not satisfy this requirement, the extent of the non-compliance is a negligible 100mm and following an inspection of the site, it is not considered that this would result in an adverse or unreasonable impact on the amenity or character of the neighbourhood.

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

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;
- Manly Local Environment Plan;
- Manly 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. Mod2020/0133 for Modification of Development Consent DA75/2016 granted for alterations and additions to an existing dwelling house including swimming pool on land at Lot 50 DP 7532,7 Kanangra Crescent, CLONTARF, subject to the conditions printed below:

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
DA01 Rev B - Site Plan / Site Analysis	3 April 2020	Space Landscape Designs
DA02 Rev B - Elevation Plan	3 April 2020	Space Landscape Designs
DA03 Rev B - Landscape Plan	3 April 2020	Space Landscape Designs

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA03 Rev B - Landscape Plan	3 April 2020	Space Landscape Designs

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



Kelsey Wilkes, Planner

The application is determined on 04/06/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments