

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0262
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 35 DP 16998, 29 Suffolk Avenue COLLAROY NSW 2097
Proposed Development:	Modification of Consent to DA2016/0715 granted for alterations and additions to a dwelling house, including a swimming pool
Zoning:	LEP - 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:	Thomas John Hicks Ana Cristina Rissato Hicks
Applicant:	Thomas John Hicks

Application lodged:	12/10/2017
Integrated Development:	No
Concurrence Required:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/10/2017 to 06/11/2017
Advertised:	Not Advertised, in accordance with A.7 of WDCP
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

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 35 DP 16998 , 29 Suffolk Avenue COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Suffolk Avenue. The site is regular in shape with a frontage of 15.24m along Suffolk Avenue and a depth of 39.625m. The site has a surveyed area of 600.7m². The site is located within the R2 Low Density Residential zone and accommodates a split-level dwelling house and outbuilding. Surrounding development consists of dwelling houses. The site has a northerly aspect with a pronounced slope falling down from the rear boundary to the frontage with Suffolk Avenue. Rock outcrops occur on the rear (southern) boundary. No significant vegetation exists on the site.

Map:



SITE HISTORY

The history of the site is as follows:

206/47: Application for "BD" (brick dwelling) dated 1947.

DA2016/0715: Development consent granted for alterations and additions to an existing dwelling dated 13 December 2016.

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 96(1A) of the Environmental Planning & Assessment Act 1979 and seeks to amend the existing development consent for alterations and additions to the existing dwelling. In detail, the modifications consist of the following:

- Modification to the shape of the eave on the upper roof. The eave will be positioned approximately 150mm closer to the rear boundary. No change is proposed to the approved height.
- Extension of retaining walls onto part of the side boundaries at the rear of the site, from the approved 900mm setbacks. 1.8m high boundary fences are proposed above the retaining walls.
- Re-orientation of swimming pool and associated structures.

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 DA2016/0715, 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 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 DA2016/0715.
(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, 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.	See discussion on "Public Exhibition" in this report.

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 development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – 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>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, permits Council to requested additional information. However, 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 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

Section 79C 'Matters for Consideration'	Comments
	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 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 proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will have a detrimental economic impact on the locality considering the nature of 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 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 application in the public interest.

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 Warringah 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

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been

External Referral Body	Comments
	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

An amended BASIX certificate has been submitted with the application (see Certificate No.A251916_02 dated 11 October 2017). The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.

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 proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environment 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	8.2m	8.2m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	6.6m	No change	Yes
B3 Side Boundary Envelope	4m (west)	Breach of 1.3m (height) x 5.8m (length)	No change	No*
	4m (east)	Breach of 0.8m (height) x 2.5m (length)	No change	No*
B5 Side Boundary Setbacks	0.9m (west)	1.48m	No change	Yes
	0.9m (east)	1.33m (dwelling) 0.9m (pool)	No change No change	Yes Yes
B7 Front Boundary Setbacks	6.5m	5.3m (eave) 6.145m (existing dwelling)	No change No change	No* No*
B9 Rear Boundary Setbacks	6m	10.25m (dwelling) 2.54m (pool)	10.1m 2.8m	Yes No
D1 Landscaped Open Space and Bushland Setting	40%	248m ² or 41.2%	242.8m ² or 40.4%	Yes

***Note:** The variation proposed to these controls was previously considered in the assessment of the original application. Therefore no further assessment of this variation is required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation		
C7 Excavation and Landfill	Yes	Yes
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
D8 Privacy	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

The amended retaining walls are located within the 900mm side setback. These are services infrastructure, less than 1m in height that qualify for an exception to the side setback control under the provisions of WDCP 2011.

B9 Rear Boundary Setbacks

Description of non-compliance

The approved pool was located 2.54m from the rear boundary, which represented a non-compliance with the minimum rear setback of 6m.

The modified pool will be located 2.8m from the rear boundary, which still represents a non-compliance.

However, the pool and ancillary structures will occupy 31% of the rear setback, which qualifies for an exception to this control under Part B9, as the structures do not exceed 50% of the rear setback area.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment: The area of landscaped open space in the rear setback will remain substantially the same as the original approval, hence this objective will not be compromised by the proposed modification.

- *To create a sense of openness in rear yards.*

Comment: As the area that the pool will occupy in the rear yard is consistent with the exception permitted under WDCP 2011, then this objective is achieved.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment: The proposed modification will not result in any privacy impacts to adjoining buildings or residences, consistent with this objective.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment: The proposed modification will not compromise this objective.

- *To provide opportunities to maintain privacy between dwellings.*

Comment: As stated previously, the proposed modification will not result in any privacy impacts to adjoining buildings or residences, consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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. Mod2017/0262 for Modification of Consent to DA2016/0715 granted for alterations and additions to a dwelling house, including a swimming pool on land at Lot 35 DP 16998,29 Suffolk Avenue, COLLAROY, subject to the conditions printed below:

A. Add Condition No.1A - 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
SV DA 04 Issue C	26.09.2017	Walknorth Arcl
SV 06 Issue C	26.09.2017	Walknorth Arcl
SV 07 Issue C	26.09.2017	Walknorth Arcl
SV 08 Issue D	27.09.2017	Walknorth Arcl
SV 08b Issue D	27.09.2017	Walknorth Arcl

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

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)

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

Signed

Nick England, Planner

The application is determined under the delegated authority of:

Phil Lane, Acting Development Assessment Manager

ATTACHMENT A

Notification Plan	Title	Date
 2017/394585	Plan - Notification	13/10/2017

ATTACHMENT B

Notification Document	Title	Date
 2017/404138	Notification Map	19/10/2017

ATTACHMENT C

Reference Number	Document	Date
 2017/394586	Report - Statement of Environmental Effects	12/10/2017
 2017/394587	Report - BASIX Certificate	12/10/2017
 MOD2017/0262	29 Suffolk Avenue COLLAROY NSW 2097 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	12/10/2017
 2017/391981	DA Acknowledgement Letter - Thomas John Hicks	12/10/2017
 2017/394582	Modification Application Form	13/10/2017
 2017/394583	Applicant Details	13/10/2017
 2017/394585	Plan - Notification	13/10/2017
 2017/395095	Letter - Cost of Works	16/10/2017
 2017/395108	Plans - External	16/10/2017
 2017/395112	Plans - Internal	16/10/2017
 2017/395133	Plans - Master Set	16/10/2017
 2017/404103	DA Acknowledgement Letter (not integrated) - Thomas John Hicks	19/10/2017
 2017/404138	Notification Map	19/10/2017
 2017/404146	DELETE	19/10/2017
 2017/441496	Confirmation of notification sign - 29 Suffolk Avenue Collaroy	08/11/2017