

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0182
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 10 DP 1230471, 19 The Crescent DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2014/0354 granted for Alterations and additions and Subdivision including site consolidation of portion of road reserve to be acquired
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:	Yes
Owner:	Tania Anne Valisia Jollie
Applicant:	Tania Anne Valisia Jollie

Application lodged:	10/07/2017
Integrated Development:	No
Concurrence Required:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/08/2017 to 08/09/2017
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 - B7 Front Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - D16 Swimming Pools and Spa Pools

SITE DESCRIPTION

Property Description:	Lot 10 DP 1230471 , 19 The Crescent DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of The Crescent . The site is legally known as Lot 2C in DP 397873, No.19 The Crescent, Dee Why. The site is irregular in shape with a frontage of 40.57m along The Crescent and a depth varying between 10.67m and 24.8m. The site has a surveyed area of 737.4m². The site is located within the R2 Low Density Residential zone and accommodates a two-storey residential dwelling house. Surrounding development consists of detached dwelling houses western side of The Crescent and residential flat buildings on the eastern side of the Crescent. The site has a significant slope with an easterly aspect. A rock cliff face of 4-7m fronts the site, with the existing structures and open space on the site accommodated through existing terraces and benching. The site sparsely vegetated with shrubs. and a turfed area on the northern boundary of the site.

Map:



SITE HISTORY

Past applications / development consents on the site include the following:

SC3697: Subdivision certificate issued to create Lot 2C on 2 November 1955.

B532/56: Application for "BD" (brick dwelling) dated 1957.

DA2006/0519: Development consent granted for "Upper Storey Addition Alterations and Additions to the Existing Dwelling" on 10 November 2003.

PLM2009/0022: Pre-lodgment meeting for "Proposed carport with pergola over" held on 31 March 2009. The applicant was advised at this meeting to re-design the proposal so that there was no encroachment on the Council road reserve and also provided with a general procedure with relation to development on the adjoining road reserve.

PLM2011/0127: Pre-lodgment meeting for "Alterations and additions to existing dwelling" held on 14 December 2011. The applicant was advised at this meeting to re-design the proposed deck and the area subject to the proposed road reserve acquisition.

DA2014/0354: "Alterations and additions to a dwelling house and Subdivision of land / Site consolidation of portion of road reserve to be acquired", was determined on the 15 September 2014. The Deferred Commencement Condition issued under DA2014/0354 for Alterations and additions to a dwelling house and Subdivision of land / Site consolidation of portion of road reserve was determined on the 1 August 2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications consist of the following:

- A redesigned open carport with an increase in dimensions to house two vehicles under cover
- A deck above the carport and landscaped planter boxes across the front of the carport returning along the street front

- Inclusion of a new entrance lobby to the dwelling
- Addition of a pergola structures at the rear and along the southern side of the dwelling
- Addition of steps at the rear from the top-level office
- Replacement of tiled roof with Colorbond metal roofing
- Inclusion of a swimming pool.

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 DA2014/0354, 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 DA2014/0354.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	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.

Section 96(1A) - Other Modifications	Comments
(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	
(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 were received in relation to this application.

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)(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

Section 79C 'Matters for Consideration'	Comments
	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 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 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 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

Internal Referral Body	Comments
Development Engineers	The Geo-Technical report has provided recommendation for the proposed swimming pool construction. No Development Engineering objection is raised to the proposed pool subject to complying with the recommendation of the Geo-technical Engineer.
Landscape Officer	No objections in general terms, however it is noted that a pergola is

Internal Referral Body	Comments
	proposed at the rear and side of the dwelling. A significant rock shelf traverses the site behind the dwelling. Providing that no excavation of the rock is proposed to extend a level area under the pergola, no objections are raised subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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

A BASIX certificate has been submitted with the application (see Certificate No.A284866 and 22 June 2017). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.A284866 and 22 June 2017).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	40	Pass

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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	8.31m	3.4m Pergola 3.2m Carport	N/A N/A	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes

Clause	Compliance with Requirements
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	5.7m	No change	N/A
B3 Side Boundary Envelope	5m	No breach	No change	N/A
	5m	No breach	No change	N/A
B5 Side Boundary Setbacks	0.9m	14.7m (north) 1.39m (south)	13.6m (North carport) 1.5m(South pool) 0.0m(South pergola)	Yes Yes No
B7 Front Boundary Setbacks	6.5m	0.906m	0.6m(carport) 2.5m(pool) 0.3m(Planterbox)	No No No
B9 Rear Boundary Setbacks	6m	5.9m	1.4m (pergola)	No
D1 Landscaped Open Space and Bushland Setting	40%	43% (319sqm)	48% (360.8sqm)*	Yes

*The landscape open space has increased due to the acquisition of council land adjoining the site.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
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
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D16 Swimming Pools and Spa Pools	No	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	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

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The proposed pergola on the is setback from the southern side boundary at 0.00 metres where the requirement is 0.9 metres, resulting in a 100% variation.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The subject area already accommodates a concrete pathway. As this is the area proposed to be built upon, the opportunities for deep soil landscape areas are retained and will remain unaffected.

- *To ensure that development does not become visually dominant.*

Comment:

The proposal is for an open pergola structure that utilizes the southern wall of the dwelling house . The proposed pergola retains height and wall compliance allowing for the existing fence line to provide a level of screening for the neighbouring property. The neighbouring property to the south also has a very large setback of over 20m and is located topographically significantly high than no.19, therefore minimising any visual impact on the neighbouring property. Thus, the proposal is considered to not impose any

unreasonable sense of visual dominance and is of a relatively minor nature.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The existing fence line, established landscaping and lower topography compared to neighbouring sites provides coverage for the southern adjoining property and the structure will not have any visual impact on the western adjoining site as a result of the location. The proposed pergola is an open structure and cannot be viewed from the streetscape due to the street level being over 10m below. The rear adjoining property will receive negligible impact as the site sits significantly lower particularly from the rear boundary. In conjunction with the landscaping and fence to further minimise the bulk and scale of the proposed, it is considered that the pergola is of a minimal nature and will impose no unreasonable impacts.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The southern adjoining site holds the highest degree of susceptibility in regards to impact as a result of the proposal. However, the proposed pergola will be of a majority shielded by the existing fence line and existing landscaping. Furthermore, the southern adjoining site topography is significantly higher than no.19 and also provides a large (over 20m) boundary setback which ensures that an adequate level of separation is retained between house no.19 and 23. Thus, it is considered that because the nature of the pergola is of a minimal building footprint and an open structure predominately covered by the existing fence line, in conjunction with no.19's larger eastern boundary side setback, that there is a more than adequate level of separation maintaining the existing level of privacy, amenity and solar access.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposed pergola will not have any unreasonable impacts on any views from surrounding sites.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP 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.

B7 Front Boundary Setbacks

Description of non-compliance

The proposed carport and planterbox is located a distance of 0.6m from the front boundary of the site, which represents a 90% variation to the minimum requirement.

The 0.6m setback is measured from the adjusted front boundary. Also important to note that the existing structures on the site encroach the existing front boundary setback.

The proposed pool is located at a distance of 2.5m from the front boundary of the site, which represents a 61%

variation to the minimum requirement. It is important to note that the irregular site size and steep topography of the site restrict the location of the proposed pool to within the front 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 create a sense of openness.*

Comment:

The existing front boundary setback encroachment will be exacerbated by the proposed swimming pool, carport, planter-box and patio which will elongate the facade of the building further across the frontage. However, as a result of the steep topography of the site and driveway access, the development potential and positioning of the proposal is severely constrained, thus the variation is not considered unreasonable. The proposed swimming pool is in ground, located 2.5m from the front boundary and is positioned 6m-7.5m above the current street view. Furthermore, between the site's front boundary and the sandstone retaining wall exists vegetation that provides existing natural screening. Therefore the pool will not be visible from the street view below. The existing front screening vegetation will also act to soften the impact of the carport structure, contributing towards the quality and sense of openness. It is therefore considered satisfactory that the frontage will maintain an adequate sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The allotment pattern in the immediate vicinity of the site is substantially irregular, based on the extreme topography of the site and the location of the road reserves for The Crescent and Carew Street. In this regard, there is no consistent front setback along The Crescent. Adjacent properties are generally located in close proximity to the front setback. Number 17 is located approximately 4m from the front boundary with an inground pool in the front setback, and No.15 is setback approximately 1m from the front boundary. The proposed swimming pool is in ground, located 2.5m from the front boundary, positioned 6m-7.5m above the current street view and existing vegetation provides natural screening meaning pool will not be visible from the street view. Given that there is no consistent front setback established along The Crescent, and the proposed pool will not be visible from the street view, the visual continuity and pattern of buildings and landscape elements in this section of the street will not be adversely affected by the proposed additions.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

As stated previously, the site is constrained by very steep topography, which forces existing (and proposed) buildings to be located in close proximity to the front boundaries of the site. The proposed works will be located 5 - 7.5m above the street level view, and combined with the existing screening vegetation between the front boundary and sandstone retaining wall that provides natural screening to soften the impact of the proposed development, it is considered that the proposal will protect and enhance the visual quality of the adjoining streetscape. Hence the proposal is consistent with this objective.

- *To achieve reasonable view sharing.*

Comment:

The proposed variation to the front setback control is unlikely to result in any adverse loss of views currently enjoyed by surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP 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.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed pergola is located 1.4m from the rear (western) boundary, which represents a 76% variation with the minimum requirement.

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 proposed pergola is to be located over an existing concrete open space that has been created within the rock-face area in the rear of the site. This rear outdoor area is heavily constrained by the very steep high rock-face and earth embankments. Therefore, the proposed pergola will result in no net loss in landscaped open space on the site. Hence the proposal is consistent with this objective.

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

Comment:

The site is irregular in topography and shape. There is a significant rock face, and earth embankments that run the full length of the rear of the property. These attributes already constrain a sense of openness in the rear of the property. Therefore, proposed open structure pergola will not modify the dimensions of the existing rear yard, hence the existing sense of the openness is maintained. The proposal is compliant in this regard.

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

Comment:

The design and location of the proposed pergola is effectively hidden from neighbours due to the topography of the property and the neighbours being positioned significantly higher than the subject

dwelling. Therefore the proposed pergola does not cause any adverse loss of visual privacy to adjoining residences. The proposal is consistent with this objective.

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

Comment:

The proposed pergola is proposed over an existing concert outdoor area. The design and location of the proposed pergola minimizes overlooking into neighbours areas and recreational spaces as the proposed addition is hidden from the adjoining neighbours to due to the topography of the property and the neighbours being positioned higher than the subject dwelling. Hence the existing visual continuity and pattern of buildings are maintained. The proposal is hence consistent with this objective.

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

Comment:

The design and location of the proposed pergola is effectively hidden from the neighbouring dwelling houses to due to the topography of the site combined with the neighbouring sites being positioned significantly higher than the subject dwelling. The proposed works have been designed to ensure no adverse impact on the visual privacy of the adjoining dwellings and the proposal is therefore consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP 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.

D16 Swimming Pools and Spa Pools

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 swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*

Comment:

The proposed in ground swimming pool is located within the front setback area as there is no viable location to provide for the pool behind the front setback to The Crescent do to the steep topography of the site. The proposed swimming pool is in ground, and is located as far as possible hard along the eastern wall of the lower ground floor. The proposed pool is excavated into the sandstone rock of the existing platform which sits at a height above the road below of between 5.94 metres and 7.44 metres, with a coping height of up to 220mm above ground. Due to the steep topography, the level of excavation to the land level and the height of the pool above the street level, the proposed swimming pool will not be visible from the street view below. The proposed pool will not see any loss of any substantial vegetation as additional landscaping along the front embankment will be undertaken. Also, the pool boundary fencing will be located in the same location as the existing boundary fencing on site. Therefore it is

considered that the proposal satisfies the objectives of the control.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed swimming pool is to be excavated and set in ground, and is substantially screened from the street view by being located 5.94 metres and 7.44 metres above the road level. The proposed pool fencing is to be located in the same location as the existing boundary fencing to reduce any possible visual impacts as viewed from The Crescent. The additional landscaping along the front embankment within the site, will provide for improved visual interest and privacy. Therefore it is considered that the proposal satisfies the objectives of the control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP 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.

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. Mod2017/0182 for Modification of Development Consent DA2014/0354 granted for Alterations and additions and Subdivision including site consolidation of portion of road reserve to be acquired on land at Lot 10 DP 1230471, 19 The Crescent, DEE WHY, 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
Floor Plans 83317.01 Issue A	22/06/2017	HSA Architects
Floor Plans 83317.02 Issue A	22/06/2017	HSA Architects
Sections and Elevations 83317.03 Issue A	22/06/2017	HSA Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment Report	09/08/2017	Jack Hodgson Consultants Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Add Condition 9A- Tree Protection to read as follows:

(a) Existing trees which must be retained

i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation

ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

C. Add Condition 9B - Waste Management Plan to read as follows:

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with Parts C8 and C9 of the WDCP 2011 and Council's Waste Management Guidelines (that apply to land covered by the WLEP 2011).

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner

D. Add Condition 9C -Structural Adequacy and Excavation Work to read as follows:

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Safety. (DACENC19)

E. Add Condition 9D - Construction of Swimming Pool to read as follows:

A N.P.E.R. structural Engineer registered with the Institute of Engineers Australia, shall certify that the proposed pool and associated retaining wall are structurally designed to comply with the recommendation in the report prepared by Jack Hodgson Consulting Pty. Limited dated 9 August 2017.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Safety (DACENADC2)

F. Add Condition 10A - Waste Management During Development to read as follows:

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

G. Add Condition 10B - Protection of rock and sites of significance to read as follows:

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features (DACLAEOG1)

H. Add Condition 11A - Waste Management Confirmation to read as follows:

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill

I. Add Condition 11B - Swimming Pool Requirements to read as follows:

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off,

is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the Division of Local Government.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Signed

Catriona Shirley, Planner

The application is determined under the delegated authority of:

Steven Findlay, Manager Development Assessments

ATTACHMENT A

Notification Plan	Title	Date
 2017/223811	Plan - Notification	11/07/2017

ATTACHMENT B

Notification Document	Title	Date
 2017/226939	Notification Map	12/07/2017

ATTACHMENT C

Reference Number	Document	Date
 2017/223814	Report - Geotechnical	20/06/2017
 2017/223813	Report - BASIX Certificate	23/06/2017
 2017/223809	Plans - Title Consolidation	23/06/2017
 2017/223803	Title Search	23/06/2017
 2017/223812	Report - Statement of Environmental Effects	09/07/2017
 MOD2017/0182	19 The Crescent DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (2) Environmental Impact	10/07/2017
 2017/219698	invoice for ram applications - Tania Anne Valisia Jollie	10/07/2017
 2017/219713	DA Acknowledgement Letter - Tania Anne Valisia Jollie	10/07/2017
 2017/223792	Modification Application Form	11/07/2017
 2017/223798	Applicant Details	11/07/2017
 2017/223810	Plans - Survey	11/07/2017
 2017/223811	Plan - Notification	11/07/2017
 2017/223820	Plans - Master Set	11/07/2017
 2017/226590	SUPERSEDED - Notification Letter - Mod - 5	12/07/2017
 2017/226939	Notification Map	12/07/2017
 2017/235389	DA Acknowledgement Letter (not integrated) - Tania Anne Valisia Jollie	17/07/2017
 2017/236711	Notification Letter - Mod - 4	18/07/2017
 2017/236718	Notification Letter - Mod - 1 (To the Resident)	18/07/2017
 2017/265843	Development Engineering Referral Response	04/08/2017
 2017/288159	Revised geotechnical report - 19 The Crescent Dee Why	15/08/2017
 2017/292871	Landscape Referral Response	17/08/2017
 2017/304046	Re-Notification Letter - Mod - 74	23/08/2017
 2017/327701	Development Engineering Referral Response	05/09/2017
 2017/353971	Working Plans	20/09/2017
 2017/366716	Site Photos for MOD.2017-0182	27/09/2017