

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0271
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 10 DP 610571, 53 Arthur Street FORESTVILLE NSW 2087
Proposed Development:	Modification of Development Consent DA2022/0751 granted for Construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	David Michael Mackay

Application Lodged:	20/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	04/07/2024 to 18/07/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application proposes to modify the consent under DA2022/0751 which approved the construction of a new dwelling house.

Modification works include:

- Delete Condition 18. Vehicle Crossing Reinstatement. It is proposed to retain the existing dual vehicular crossovers rather than remove one redundant crossover as required by the condition.

Condition 18 was originally recommended by Council's Development Engineer and the modification has therefore been referred back for review.

The proposed plans have been modified accordingly to represent the dual crossovers and retention of the existing carport at the northern side of the allotment. Amended landscape plans have also been provided which include replacement landscaping at the rear to offset the loss at the front of the site from the second driveway.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 10 DP 610571 , 53 Arthur Street FORESTVILLE NSW 2087
Detailed Site Description:	The site is irregular in shape, with a frontage of 29.345m to Arthur Street, and a total land area of 823.1m². The lot is zoned R2 Low Density Residential and currently contains an existing residential dwelling. The site is moderately vegetated at both the front and rear. The site is generally flat with a gentle fall towards the rear. The neighbourhood generally consists of a mix of residential dwellings of one and two storey construction as anticipated within an established residential area.

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:

Application **DA2022/0751** for Construction of a dwelling house (Approved 24/08/2022)

Application **CDC2022/0965** for Demolition of existing structures - 2611/2016 (30/08/2022)

Application **Mod2023/0675** for Modification of Development Consent DA2022/0751 granted for Construction of a dwelling house (Withdrawn 07/02/2024)

- *Application withdrawn in response to a Council RFI. The application requested deletion of Condition 18 however updated architectural plans were not provided to support the request. Application now re-lodged under the current subject application.*

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 DA2022/0751, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: The application requests the deletion of Condition 18 and the retention of the dual driveway crossovers which were existing on-site prior to the approval of DA2022/0751. There is no adverse impact to any existing approved built form controls.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0751 for the following reasons: The application requests the deletion of Condition 18 and the retention of the dual driveway crossovers which were existing on-site prior to the approval of DA2022/0751. There is no adverse impact to any existing approved built form controls.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55(1A) - Other Modifications	Comments
(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 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was provided in response to referral comments from Council's Landscape Officer. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application.

Section 4.15 'Matters for Consideration'	Comments
	<u>Clauses 62</u> and/or 64 of the EP&A Regulation 2021 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 of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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 Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 04/07/2024 to 18/07/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Updated comments: Amended Landscape Plans are submitted replacing the prior proposed turf cell, which is considered a structure, with lawn into natural ground and no concerns are raised. Condition 19 Landscape Completion remains valid including tree planting to the front setback as documented. Condition 21 Landscape Maintenance shall be modified to reflect the updated Landscape Plans documentation of landscape areas. Previous comments: <i>The application is to modify development consent DA2022/0751 to remove Condition 18 and utilise two driveways into the property and hardstand the front setback.</i> <i>A Landscape Plan is submitted indicating that a portion of the fronts setback will comprise of turf cell. The proposed function of the front setback is to allow for the manoeuvring of vehicles and thus the front setback is therefore not proposed for planting as defined under the Warringah DCP for landscape area. Landscape Referral view turf cell as hardstand. The presence of vehicles over turf cell will ultimately result in grass failure and this system is not successful in supporting planting.</i> <i>The approved landscape area of this modification proposal is substantially reduced from the approved consent with no environmental benefits.</i>
NECC (Development Engineering)	The proposed modification to include a car hardstand adjacent to the proposed dwelling is supported. As the submitted plans do not include any dimensions for the hardstand area, conditions have been included to ensure this is achieved by the applicant. Development Engineering support the proposal subject to the deletion of conditions 10 and 18 of consent DA2022/0751 and the following conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
D1 Landscaped Open Space and Bushland Setting	40%	40.91%	50%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0271 for Modification of Development Consent DA2022/0751 granted for Construction of a dwelling house on land at Lot 10 DP 610571, 53 Arthur Street, FORESTVILLE, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN# - PAN-436641 MOD# - MOD2024/0271	The date of this notice of determination	Modification of Development Consent DA2022/0751 granted for Construction of a dwelling house Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation Modify Condition No.21 - Landscape Maintenance Delete Condition No.10 - Vehicle Crossings Application (Re-instatement of Existing Crossing) Delete Condition No.18 - Vehicle Crossing Reinstatement Add Condition No.14A - Off Street Parking Design to read as follows Add Condition No.20A - Certification of Off Street Parking Works

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
LCP-01	A	Concept Plan	Fifth Season	23 July 2024
DET-01	A	Section	Fifth Season	19 February 2024
DET-2	A	Section	Fifth Season	28 May 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that

applies to the development.

B. Modify Condition No.21 - Landscape Maintenance to read as follows:

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any paved surfaces or structures.

Reason: To maintain local environmental amenity.

C. Delete Condition No.10 - Vehicle Crossings Application (Re-instatement of Existing Crossing)

D. Delete Condition No.18 - Vehicle Crossing Reinstatement

E. Add Condition No.14A - Off Street Parking Design to read as follows:

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Sections 2.4 Design of Parking Modules and 2.6 Design of Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Compliance with this consent.

F. Add Condition No.20A - Certification of Off Street Parking Works to read as follows:

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Sections 2.4 Design of Parking Modules and Section 2.6 Design of Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Compliance with this consent.

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

Signed



Dean Pattalis, Planner

The application is determined on 29/07/2024, under the delegated authority of:



Steven Findlay, Manager Development Assessments