

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0137
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 4 DP 242932, 84 Lincoln Avenue COLLAROY NSW 2097
Proposed Development:	Modification of Development Consent DA2019/0076 granted for alterations and additions to 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
Owner:	Daniel Cirillo Nicla Lara Cirillo
Applicant:	Daniel Cirillo

Application Lodged:	13/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/05/2022 to 06/06/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Modification of Development Consent DA2019/0076 granted for alterations and additions to a dwelling house. The modifications include;

- Alterations to approved facade,
- Changes to roof formation, including the conversion to a flat roof,
- Extension (up to 2.5m) to first floor master bedroom and balcony,
- Various changes to approved windows and doors as indicated on the elevations,
- Internal alterations,
- Widen garage entry by 0.9m.
- Associated landscaping works, including converting existing hard surfaces into deep soil landscaping.

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 - B3 Side Boundary Envelope

SITE DESCRIPTION

Property Description:	Lot 4 DP 242932 , 84 Lincoln Avenue COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of Lot 4 within DP 242932 and is located on the eastern side of Lincoln Avenue, Collaroy.</p> <p>The site is irregular in shape with a frontage of 21.1m along Lincoln Avenue and a depth of 39.6m. The site has a surveyed area of 711.7m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing two storey dwelling, attached double garage and in ground swimming pool.</p> <p>The site falls from north east to south west (rear to front) at an average angle of 6 degrees.</p> <p>Vegetation on site is minimal but is mainly characterised by small shrubs, areas of lawn and stone retaining walls.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by residential dwellings of similar double storey, brick and tiled roof style.

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:

CDC2018/0951

Construction of a swimming pool, spa and retaining walls issued on 25 September 2018.

DA2019/0776

Development application for alterations and additions to an existing dwelling approved on 04 October 2019.

CDC2020/0329

Change of use to create a secondary dwelling within the primary dwelling issued on 27 May 2020.

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 DA2019/0776, 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	<p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>Quantitative Assessment <i>At Section 3 and 7.3 of the Report, we discussed quantity changes or measurements of the design elements regarding compliance with key DCP numerical components such as the height of building, shadowing, landscaping areas and setbacks.</i></p> <p><i>It is acknowledged there is a slight encroachment to the envelope control and despite this, the proposal is viewed acceptable as the proposal remains for improvements and revamp of a dwelling house which was always the original intent of the Development Application.</i></p> <p><i>Another feature of the proposal from day one was to improve the living standards of the multi-generational family residing from their residential place and this has not changed.</i></p> <p><i>In our view, it would be counterproductive to assess the proposal for something else other than alterations and additions to a residential property or to have a new Development Application to undress a revised scheme to fit some other land use purpose as there is no other purpose and that would not be the intent of the Planning legislation.</i></p> <p><i>Based on our assessment, there will be no major impact on the locality of the site from a quantitative assessment.</i></p> <p>Qualitative Assessment <i>At Section 3 and 7.3 of the Report, we discussed the descriptive nature of the changes and compare the visual changes with a before and after approach.</i></p> <p><i>The architectural language adopted within the revised scheme does not create any additional environmental impacts for the adjoining owners or the locality.</i></p> <p><i>The revised scheme from a building design point of view provides for a better and more visually pleasing façade.</i></p> <p><i>The bulk and scale of the dwelling is lessened, and the choice of materials and finishes would remain acceptable, and the end result of the dwelling house would not be out of character.</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>The changes do not cause any greater overlooking issues for adjoining occupiers and the window openings and revised floor plates, and use of space is for low density purposes.</i></p> <p><i>The intensity of the proposal remains in a low density housing form and the secondary dwelling component being absorbed into the documentation does not change the purpose or use of the residential space.</i></p> <p><i>The purpose here remains to accommodate a multi-generational family under one space or one roof. Whether a roofline is pitched or flat, the use does not change and visually speaking, the flat roofline would be visually less intrusive and falls within the intent of the proposal for alterations and additions.</i></p> <p><i>Based on the above assessment, the modified development is substantially the same as the original approved development as the development is essentially or materially the same in terms of use, intensity and environmental impacts from a qualitative and quantitative point of view.</i></p> <p>In considering the principles established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> and undertaking the assessment it is considered that the development as to be modified is considered to be substantially the (original) consent and can be considered under Section 4.55 of the Act.</p>
(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 DA2019/0776 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent</p>	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 (2) - Other Modifications	Comments
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 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	No draft instruments apply,
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><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.</p>

Section 4.15 'Matters for Consideration'	Comments
	Clause 69 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	<p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
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 development application has been publicly exhibited from 23/05/2022 to 06/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Applicant seeks approval to modify an approved DA. The propose modification does not impact on Development Engineering matters.

Internal Referral Body	Comments
	No Development Engineering objection with no conditions.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A450793 dated 02 March 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	7.1m	6.9m	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
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	5.4m	6.0m	Yes
B3 Side Boundary Envelope	4m - SE	No encroachment	No change	N/A
	4m - NW	No encroachment	Two encroachments	No
B5 Side Boundary Setbacks	0.9m - SE	0.9m	No change	N/A
	0.9m - NW	9.5m	1.4m	Yes
B7 Front Boundary Setbacks	6.5m	9.2m	9.6m	Yes
B9 Rear Boundary Setbacks	6m	6.1m	No change	N/A
D1 Landscaped Open Space and Bushland Setting	40%	37% (262m ²)	40% (284.6sqm)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	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
D2 Private Open Space	Yes	Yes

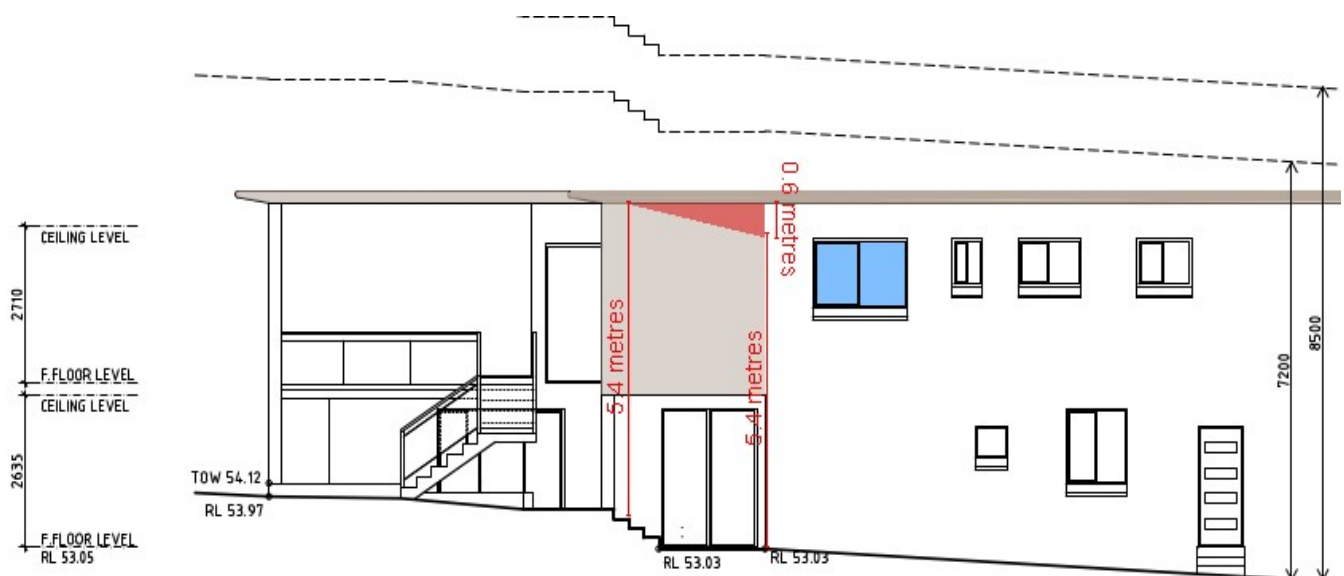
Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The proposal projects outside of the building envelope on the northwest side boundary, as demonstrated in the below diagram.



NORTH WEST ELEVATION

Figure 1. Northwest boundary envelope encroachments.

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 that development does not become visually dominant by virtue of its height and bulk.*

Comment:

In this circumstance, the encroachments outside of the prescribed envelope is consequent of following the existing building lines of the house and a minor slope in the ground from east to west. The portion of walls that encroach the prescribed envelope complies with Part B7 Wall Height of the WDCP and is 0.5m lesser than the maximum.

By way of following the existing building line of the house, it is found that the development has a lesser visual dominance compared to a design that did comply, which would result in an awkward building step that would draw more attention to the wall than what is proposed. Notwithstanding this, the proposed modifications are compatible with other two storey development situated along Lincoln Avenue consisting of large detached two storey dwelling houses that vary in age and construction.

Given the above factors, the development is not visually dominant by virtue of its height and bulk.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The proposal does not result in any unreasonable loss of light, solar access or privacy. Compliant spatial separation between buildings is achieved pursuant to the prevailing planning controls.

- *To ensure that development responds to the topography of the site.*

Comment:

The development appropriately responds to the topography of the site.

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 s1.3 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 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 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 to Modification Application No. Mod2022/0137 for Modification of Development Consent DA2019/0076 granted for alterations and additions to a dwelling house on land at Lot 4 DP 242932,84 Lincoln 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
1-5 982 22	Not stated	High Design
3-5 982 22	Not stated	High Design
4-5 982 22	Not stated	High Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A450793	3 March 2022	Sustainability-Z P/L
Geotechnical Report No. J2291A	2 March 2022	White Geotechnical Group

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:

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	Not stated	Bob Vujicic

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

B. Add Condition No. 3A - Compliance with Other Department, Authority or Service Requirements, to read as follows:

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	17 June 2022
Aboriginal Heritage Office	Response AHO Referral	19 May 2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

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

Signed



Kye Miles, Planner

The application is determined on 05/07/2022, under the delegated authority of:



Adam Richardson, Manager Development Assessments