

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2022/0019
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Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 11 DP 28512, 9 Vines Avenue FORESTVILLE NSW 2087
Proposed Development:	Review of Determination of MOD2022/0326 for Modification of Development Consent DA2019/1536 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
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Tracy Helen Wallace Hart
Applicant:	Tracy Helen Wallace Hart

Application Lodged:	15/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/09/2022 to 13/10/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 30,000.00
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EXECUTIVE SUMMARY

This application seeks a review of the determination of Mod2022/0326 which approved modifications to Development Consent DA2019/1536, that granted approval for alterations and additions to a dwelling house.

Specifically, the application seeks to review the modified conditions of consent that were provided for with the Mod2022/0326, namely to remove Condition 7A - External Finishes to Roof.

This application is referred to the Development Determination Panel (DDP) as any Review of

Determination under Section 8.2 is to be determined by the DDP. The determination of the review is referred to the DDP with sufficient time for it to be completed within the 6 month time period imposed under Section 8.3(2) of the EPA Act, 1979.

The review of determination seeks to remove Condition 7A as it requires the external finish of the roof to have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Despite the condition and absent any information provided for assessment with the Modification Application, the awning is permitted to be constructed in the colour 'Surfmist Matt'. This is due to the roof finish being considered acceptable as the already built dwelling house roof and its finish accorded with a lawful direction from the Certifier, with the roof being constructed in accordance with that direction. Pursuant of Clause 161 of the Environmental Planning and Assessment Regulation 2000 (that applied at the time), Certifiers can exercise their right to be satisfied on a matter that relates to the external finish of a building. As such, the roof finish is considered acceptable to them and construction of the roof occurred subject of a direction from the Certifier that well pre-dates the modification application, the imposition of Condition 7A had no basis and its power cannot retrospectively apply. As such upon review and with regard to the power of the Certifier, its deletion is recommended.

Therefore, this report concludes with a recommendation that the DDP grant approval to the review and delete Condition 7A.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks to review Condition 7A of Mod2022/0326.

Specifically, this review seeks to remove the following condition:

Condition 7A - External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

This application does not propose any changes to the built form of the development, only the removal of the above condition.

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.

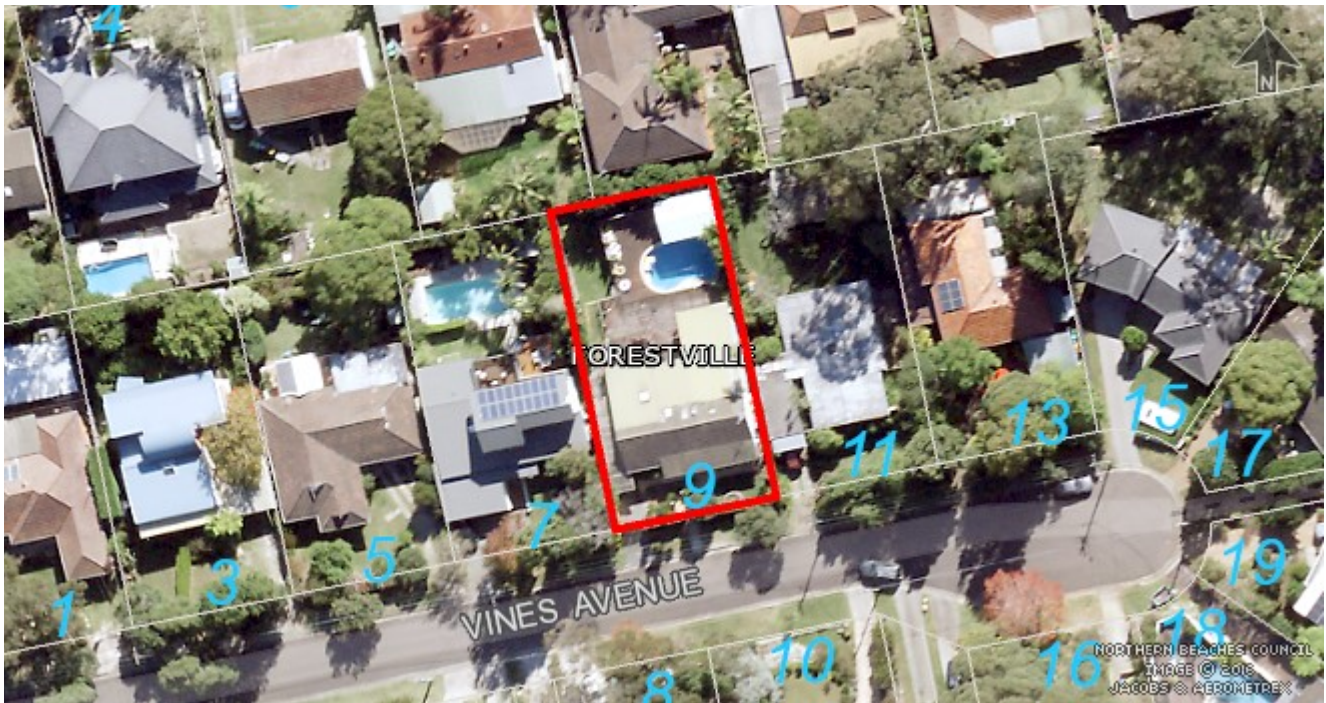
SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 11 DP 28512 , 9 Vines Avenue FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Vines Avenue. The site is regular in shape with a frontage of 18.7 metres and a depth of 37.2 metres. The site has an area of 697m².</p> <p>The site slopes from the southern front boundary down towards the northern rear boundary.</p> <p>The site is currently occupied by a dwelling house, carport and swimming pool. The site contains lawn area, garden beds, shrubs and trees. There are no details of any threatened species on the subject site.</p> <p>The surrounding development is characterised by one and two storey dwelling houses of varying styles.</p>

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:

- **DA2017/0693** - Development Application for Alterations and Additions to an existing dwelling house. Approved on 19 September 2017.
- **DA2019/1536** - Development Application for Alterations and additions to a dwelling house. Approved on 11 March 2020.
- **Mod2020/0154** - Modification of Development Consent DA2019/1536 granted for alterations and additions to a dwelling house. Approved on 21 May 2020.
- **CC2020/0772** - Construction Certificate for Alterations and additions to a dwelling house. Approved on 5 August 2020 by External Private Certifying Authority.
- **NOC2020/0876** - Notice of Commencement for Alterations and additions to a dwelling house. Dated 10 August 2020.
- **DA2021/0214** - Development Application for Construction of a boundary retaining wall. Approved on 26 April 2021.
- **Mod2022/0326** - Modification of Development Consent DA2019/1536 granted for alterations and additions to a dwelling house. Approved 28 July 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council as the consent authority to review of determination made by Council.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 28 July 2022 and the notice of determination was issued on 28 July 2022. The review

was lodged on 23 August 2022 and is to be considered by the Development Determination Panel prior to 28 January 2023, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application. This review application does not include any amendments to the development described in the original application, rather it seeks a review of determination based on information that was not available to Council in its role of consent authority when it determined the Modification Application.

History and Basis of Review

On 11 March 2020, Council granted consent for alterations and additions to a dwelling house in approving DA2019/1536. CC2020/0772 - Construction Certificate for alterations and additions to a dwelling house was issued on 5 August 2020. The stamped plans for DA2019/1536 included the materials and finishes schedule outlining the roof colour as 'Jasper Matt' on drawing A-13. It was decided that the roof colour needed to change from 'Jasper Matt' to 'Surfmist Matt' to achieve the 'Hamptons style' that was desired by the owners. The owner subsequently wrote to the Certifier on 19 October 2020 asking if a Section 4.55 would be required to change the roof colour or if they were able to sign off on the roof colour change. The Certifier replied on 22 October 2020, advising that as there was no specific condition imposed on DA2019/1536 specifying or restricting the colours and finishes schedule to be used in the development, that his powers as Certifier allowed the substitution of colours and finishes within the lodgement of a Section 4.55. This is clarified within extracts from the email correspondence in Figure 1 below.

RE: 9 Vines Avenue - Roof/Fascia Colour Amendment with 455 Modification

 Chris Dan <chris@cdcert.com.au>
To: Tracy Hart <tracyhart75@outlook.com>

Hi Tracy,

I have reviewed the conditions of consent and stamped approved plans. On the basis that there is no colour schedule condition on the consent, I am happy to accept the colour changes noted in your email without the lodgement of a Section 4.55 ap
If you have any questions let me know.

Regards,

Chris Dan

Director

Building Certifier Grade A1

CD Certification Pty Ltd

M: 0439 517 745

O: 02 4332 6888

E: chris@cdcert.com.au

W: www.cdcertification.com.au



From: Tracy Hart <tracyhart75@outlook.com>

Sent: Monday, 19 October 2020 8:34 PM

To: Chris Dan <chris@cdcert.com.au>

Subject: Fwd: 9 Vines Avenue - Roof/Fascia Colour Amendment with 455 Modification

Hi Chris

Please see below message from my architect. Lashta Haidari at Northern Beaches Council pretty much said the same thing, that is, 'that I should speak to my certifier about this'.

Can you please confirm that you can sign off on the roof colour change so I don't have to spend thousands of dollars doing a 455?

I don't want to do anything against the law but I certainly don't want to spend money where I don't have to (3 hungry children don't come cheap 😊).

Thanks

Tracy

Sent from my iPhone

Figure 1 - Extracts from email correspondence between owner of 9 Vines Avenue and the Certifier

Pursuant of Clause 161 of the Environmental Planning and Assessment Regulations 2000 (which were applicable at the time) Certifiers have the discretion to exercise their right to be satisfied on a matter that relates to the external finish of a building. As such, the roof finish is considered acceptable and the subsequent construction of the roof occurred subject of a lawful direction from them.

Mod2022/0326 - Modification of Development Consent DA2019/1536 was then lodged proposing the addition of an awning above the rear northern deck. This modification was approved on 28 July 2022 with condition 7A added requiring external finishes to the roof to have a medium to dark colour range. This condition was imposed to ensure that excessive glare or reflectivity nuisance does not occur as a

result of the development. The submitted plans and subsequent stamped plans for Mod2022/0326 included the awning material and colour to be 'Jasper Matt' on drawing A-09. At this time, Council was unaware of the change in roof colour to 'Surfmist Matt' following the direction of the Certifier.

Subsequently, the imposition of Condition 7A contradicts the direction of the Certifier which permitted the use of a light coloured roof 'Surfmist Matt'. As the decision of the Cerifier is both lawful and pre-dates the modification application, the imposition of Condition 7A had no basis and its power cannot retrospectively apply. As such, upon review and with regard to the power of the Certifier, its deletion is recommended.

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 29/09/2022 to 13/10/2022 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

No referrals were sent in relation to this application

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A365047_04 dated 9 June 2022).

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

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

This review application does not alter the previously approved development standards.

Warringah Development Control Plan

Built Form Controls

This review application does not alter the previously approved built form.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	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

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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

This review of determination of Mod2022/0326 for Modification of Development Consent DA2019/1536 granted for alterations and additions to a dwelling house is referred to the DDP as any Review of Determination under Section 8.2 is to be determined by the DDP.

The review of determination seeks to remove Condition 7A as it requires the external finish of the roof to have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Despite the condition and absent any information provided for assessment with the Modification Application, the awning roof is permitted to be constructed in the colour 'Surfmist Matt'. This is due to the roof finish being considered acceptable as the already built roof and its finish accorded with a lawful direction from the Certifier, with the roof being constructed in accordance with that direction. Pursuant of Clause 161 of the Environmental Planning and Assessment Regulation 2000 (which was in force at the time), Certifiers have the ability to exercise their right to be satisfied on a matter that relates to the external finish of a building. As such, the roof finish is considered acceptable to them and construction of the roof occurred subject of a direction from the Certifier that well pre-dates the modification application, the imposition of Condition 7A had no basis and its power cannot retrospectively apply. As such upon review and with regard to the power of the Certifier, its deletion is recommended.

Therefore, this report concludes with a recommendation that the DDP grant approval to the review and delete Condition 7A.

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 Development Consent to REV2022/0019 for Review of Determination of MOD2022/0326 for Modification of Development Consent DA2019/1536 granted for Alterations and additions to a dwelling house. on land at Lot 11 DP 28512, 9 Vines Avenue, FORESTVILLE, subject to the conditions printed below:

A. Delete Condition 7A - External Finishes to Roof