

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0589
<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 1 DP 206629, 45 Oxford Falls Road BEACON HILL NSW 2100
<b>Proposed Development:</b>	Modification of Development Consent DA2020/1043 granted for Subdivision of land, including alterations and additions to a dwelling house, new driveway and parking
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jiri Albrecht Marcela Albrecht
<b>Applicant:</b>	Jiri Albrecht

<b>Application Lodged:</b>	31/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	10/01/2024 to 25/01/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications seek to include the elevations of the existing dwelling house which is to be partially demolished to allow for the new subdivision works. Two (2) windows will be incorporated on the northern ground floor bedroom with one (1) window facing east and another window facing northern.

#### Application History

20 December 2023 - Council wrote to the applicant stating this application could not be assessed as Section 4.55(1), however could be assessed as a Section 4.55(1A). Additionally, a request for a new BASIX Certificate was also made to the applicant due to the new windows for the bedroom.

21 December 2023 - Applicant paid the appropriate fees for the change to the application including a notification fee. A new BASIX Certificate was also lodged by the applicant.

## 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 - C1 Subdivision

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 206629 , 45 Oxford Falls Road BEACON HILL NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Oxford Falls Road. The site located on the junction of Oxford Falls Road and Iris Street.</p> <p>The site is regular in shape with a frontage of 17.34m along Oxford Falls Road and a depth of 64.975m. The site has a surveyed area of 1126m<sup>2</sup>. The site has a fall of approximately 12.6m to the front, northern boundary.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two (2) storey dwelling with attached and detached garage which has vehicular access off Dareen Street via a right of carriageway.</p> <p>The site has landscaped gardens with the existing dwelling and exposed sandstone rock outcrops at the front portion of</p>

the site.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by one (1), two (2) and three (3) storey dwellings with associated outbuildings/structures and landscaped gardens.

Map:



**SITE HISTORY**

**DA2019/0843 - Subdivision of land and associated construction of a new car stand area and driveway**

On 23 September 2019 a letter from Council was sent to the applicant requesting the withdrawal of the Development Applications for the following concerns:-

**"Development Engineers**

*1. Failure to provide details in regards to Council's stormwater pipeline. Council's records indicate that the proposed development is adjacent to Council's stormwater pipeline. As outlined in the Development Application Checklist, the applicant shall demonstrate compliance with Council's Warringah Building Over or Adjacent to Constructed Drainage Systems and Easements Technical Specification. This consists of accurately locating, confirming dimensions including depth and plotting Council's stormwater pipelines and associated infrastructure to scale on the DA plans in accordance with Section 8.1 of this Specification.*

*Council has public Planning Maps online with stormwater information as a reference for detailed stormwater investigations, available under the "Stormwater" overlay map (<https://services.northernbeaches.nsw.gov.au/icongis/index.html>).*

*2. Failure to provide Stormwater Management Plan. As the existing impervious area in proposed Lot 1*

*exceeds 40 percent of the total lot area, an OSD system for the proposed Lot 1 shall be designed in accordance with Warringah On Site Stormwater Detention (OSD) Technical Specification and shown on the Stormwater Management Plan. The Stormwater Management Plan shall show how stormwater from proposed Lot 1 is disposed of to Oxford Falls Road via the proposed stormwater easement.*

*3. Subdivision plan shall show the indicative location of any easement for utilities services for proposed Lot 1. Revised subdivision plan shall be submitted to Council for assessment.*

*4. On the Development Application Form, the description of work stated proposed demolition of a portion of the existing carport (proposed Lot 1), which is not shown on the DA plans. Clarification is required to be submitted to Council in regards to the scope of the works.*

*The proposed application cannot be supported by Development Engineering due to lack of information to address:*

- *Council's stormwater assets for the development in accordance with clause C6 Building Over or Adjacent to Constructed Council Drainage Easements of Warringah DCP 2011*
- *OSD system design in accordance with Clause C1 Subdivision of Warringah DCP 2011.*

**Clause 4.1 Minimum subdivision lot size of Warringah Local Environmental Plan 2011(WLEP 2011)**

*The proposed subdivision seeks to create two lots (Lot 1 – 684.4sqm and Lot 2 – 442.2sqm) within the R2 Low Density Residential zone which requires a minimum lot size of 600sqm. Lot 2 would be 157.8sqm short of requirement with a variation of 26.3%. It is considered that this variation is excessive considering the topography of Lot 2, with an approximate fall of 11m (40% grade). Additionally, it is noted that 43 Oxford Falls Road (574.2sqm), 41 Oxford Falls Road (611.7sqm) and 39 Oxford Falls Road (611.3sqm) are either compliant or just under the requirement. The proposed subdivision would be inconsistent with the established pattern of subdivisions within the vicinity."*

On 2 October 2019 the applicant formally withdrew the development application.

**DA2020/1043 - Subdivision of land, including alterations and additions to a dwelling house, new driveway and parking approved 25 January 2021**

**MOD2022/0699 - Modification of Development Consent DA2020/1043 granted for subdivision of land, including alterations and additions to a dwelling house, new driveway and parking approved 17 March 2023**

**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 DA2019/0843, 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
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposed windows to the ground floor bedroom demonstrate adequate spatial separation from adjoining dwellings, ensure reasonable levels of amenity and is considered to be of minimal environmental impact.</p>
<p>(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</p>	<p>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 DA2019/0843 for the following reasons:</p> <p>This current modification incorporates windows for the ground floor bedroom and there is no change to the building footprint from the original approval ensuring this modified development is substantially the same as the original approved development..</p>
<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 authority is a council that has made a development control plan under section 72 that requires</p>	<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.</p>

Section 4.55(1A) - Other Modifications	Comments
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 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)	<p><u>Part 4, Division 2</u> of the EP&amp;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&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a BASIX Certificate this was submitted by the applicant on 21 December 2023.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 69 of the EP&amp;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> <p>Clause 69 of the EP&amp;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.</p>
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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 10/01/2024 to 25/01/2024 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	Following review of the modification application plans and reports, no Landscape Referral concerns are raised with the proposed modification proposal.
NECC (Development Engineering)	The proposal does not alter the original assessment of the application by Development Engineering.  Development Engineering support the proposal with no additional or modified conditions of consent recommended.

External Referral Body	Comments
Integrated Development - Rural Fire Service - Rural Fires Act, s100B - Subdivisions and Special Fire Protection Purposes	The New South Wales Rural Fire Service (NSW RFS) has reviewed the submitted amended information. General Terms of Approval are now re-issued, under Division 4.8 of the Environmental Planning and Assessment Act 1979, and a Bush Fire Safety Authority, under section 100B of the Rural Fires Act 1997.

## 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. 1731377). 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

Built form remains unaltered from the original approval (DA2020/1043)

#### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 6 Additional Local Provisions	Yes
6.4 Development on sloping land	Yes

### Warringah Development Control Plan

#### Built Form Controls

Built form remains unaltered from the original approval (DA2020/1043)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part C Siting Factors	Yes	Yes
C1 Subdivision	Yes	Yes
Part D Design	Yes	Yes
D6 Access to Sunlight	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
D14 Site Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D21 Provision and Location of Utility Services	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

#### **C1 Subdivision**

Existing approved subdivision remain unaltered by this current modification.

#### **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. Mod2023/0589 for Modification of Development Consent DA2020/1043 granted for Subdivision of land, including alterations and additions to a dwelling house, new driveway and parking on land at Lot 1 DP 206629,45 Oxford Falls Road, BEACON HILL, 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-383927 MOD2023/0589	The date of this notice of determination	Section 4.55 (1a) Minor Environmental Impact - Modification of Development Consent DA2020/1043 granted for Subdivision of land, including alterations and additions to a dwelling house, new driveway and parking  Add Condition No. 2B - Modification of Consent - Approved Plans and supporting Documentation  Modify Condition 3 - Compliance with Other Department, Authority or Service Requirements
PAN-290704 MOD2022/0699	17 March 2023	Modification of Development Consent DA2020/1043 granted for subdivision of land, including alterations and additions to a dwelling house, new driveway and parking  Delete Condition 1 - On-site Stormwater Detention Details Add Condition No. 2A - Modification of Consent - Approved Plans and supporting Documentation Modify Condition 3 - Compliance with Other Department, Authority or Service Requirements Modify Condition 12 - On-site Stormwater Detention and

	Inter-allotment Drainage Details Add Condition 20A - On Slab Landscape Works Add Condition 20B - Stormwater Drainage Application Add Condition 33A - Required Planting Add Condition 44 - Landscape Maintenance
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**Modified conditions**

**A. Add Condition No.2B - 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.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
Sheet 1	1	Site Plan	Michal Korecky	11 October 2023
Sheet 6	1	Proposed Ground Floor Plan	Michal Korecky	11 October 2023
Sheet 7	1	Proposed First Floor Plan	Michal Korecky	11 October 2023
Sheet 8	1	Proposed East & North Elevation	Michal Korecky	11 October 2023
Sheet 9	1	Proposed West Elevation	Michal Korecky	11 October 2023
Sheet 10	1	Erosion & Sediment Management Plan	Michal Korecky	11 October 2023
Sheet 11	1	Concept Stormwater Management Plan	Michal Korecky	11 October 2023

<b>Approved Reports and Documentation</b>	
<b>Document Title</b>	<b>Pi</b>
BASIX Certificate (A1731377)	M

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 3 - 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:

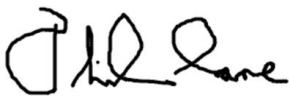
<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>
NSWRFS	Response NSWRFS Referral
Ausgrid	Ausgrid Referral Response
Ausgrid	Ausgrid Referral Response - Network Standard
Ausgrid	Ausgrid Referral Response - Clearances Quick R Guide

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



**Phil Lane, Principal Planner**

The application is determined on 30/01/2024, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**