

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0058
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<b>Responsible Officer:</b>	Clare Costanzo
<b>Land to be developed (Address):</b>	Lot 2 SP 51300, 2 / 25 Charles Street FRESHWATER NSW 2096
<b>Proposed Development:</b>	Modification of Development Consent DA2020/1180 granted for alterations and additions to a dual occupancy
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Marcus Alexander Rosenberg Charlotte Jane Ralph
<b>Applicant:</b>	Rapid Plans Pty Ltd

<b>Application Lodged:</b>	23/02/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	07/03/2022 to 21/03/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of modification to works approved under development application DA2020/1180.

The following modifications are proposed:

- New timber sheet roofing over approved carport
- Internal alterations to approved kitchen
- Removal of approved attic stairs
- Infill of a portion of the approved decking to form part of the existing living and dining
- Reduction in size to the approved balcony
- Removal of approved attic

- New skylights

## 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

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 SP 51300 , 2 / 25 Charles Street FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site is identified as Unit 2, 25 Charles Street, Freshwater and is located on the south east side of Charles Street.</p> <p>The site is a regularly shaped allotment with a frontage of 15.24 metres and a maximum depth of 40.235 metres. The site has a surveyed area of 613.1m<sup>2</sup> and is slightly sloped, with a front to rear fall of approximately 1.4 metres and a side to side slope of approximately one metre.</p> <p>The subject site and all adjoining sites are located within an R2 Low Density Residential zone. It is mapped as being within a landscape risk area (Area A). The site does not contain a heritage item and is not within the vicinity of a heritage conservation area.</p>

Development on the site includes a three storey building with a steeply pitched roof. The building contains a dual occupancy (originally approved by Building Application No. 261/51); Unit 2 occupies the top floor of the building. Two tandem car parking spaces are located between the buildings southwest elevation and the southwest side boundary. Access to Unit 2 is provided via external stairways on both side elevations of the building.

It should be noted that Unit 1 was also the subject of recent alterations and additions which was approved by Development Consent No. DA2021/1218.

### **Detailed Description of Adjoining/Surrounding Development**

Development on adjoining sites consists of detached dwelling houses. Residential zoned areas contain predominantly low density residential development (i.e dwelling houses, dual occupancies and associated structures), however the wider area is characterised by isolated multi-dwelling housing developments, residential flat buildings and commercial premises. RE1 zoned areas to the east and south east are largely undeveloped except for beach carparks and a surf club.

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:

- Development Application DA2020/1180 for alterations and additions to a dual occupancy was

- approved by Council under delegation on the 22 February 2021
- Modification Application Mod2021/0293 for modification of development consent DA2020/1180 granted for alterations and additions to a dual occupancy was approved by Council under delegation on the 1 June 2021

## 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 DA2020/1180, 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	<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> <ul style="list-style-type: none"> <li>The works are limited to the existing development footprint</li> <li>No environmental impacts expected above those considered in the original application</li> <li>The works are substantially the same as previously approved</li> </ul>
(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>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/1180 for the following reasons:</p> <ul style="list-style-type: none"> <li>The works are limited to the existing development footprint and directly relate to</li> </ul>

Section 4.55(1A) - Other Modifications	Comments
	works previously approved <ul style="list-style-type: none"> <li>No environmental impacts expected above those considered in the original application</li> </ul>
(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 2000, and the Northern Beaches Community Participation Plan.
(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.	See discussion on "Notification & Submissions Received" in this report.

#### 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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) –	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent

Section 4.15 'Matters for Consideration'	Comments
Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 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.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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 'Matters for Consideration'	Comments
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

The assessment conducted in development application DA2020/1180 remains applicable to the subject modification application. No further assessment required.

## 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 07/03/2022 to 21/03/2022 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Jason Zsolt Hatvany	36 A Kooloora Avenue FRESHWATER NSW 2096

The following issues were raised in the submissions:

- Visual and acoustic privacy

The above issues are addressed as follows:

- **Visual and acoustic privacy**

The submissions raised concerns that the front balcony overlooking Charles Street will result in unreasonable visual and acoustic privacy outcome.

### Comment:

The balcony of concern was approved under DA2020/1180 and therefore is not subject to assessment under this modification application.

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Applicant seeks minor modification to an approved DA. No Development Engineering objection with no additional conditions.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

#### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A383346\_05 dated 14 February 2022).

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

### 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	% Variation	Complies
Height of Buildings:	8.5m	8.47m (existing 10.93m ridge	8.3m (new works)	N/A	Yes

height unchanged)

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
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	N/A	no changes	N/A
B3 Side Boundary Envelope	NE: 5m	not within	not within	<b>No</b>
	SW: 5m	not within	within	Yes
B5 Side Boundary Setbacks	NE: 0.9m	1.5m	2.2m	Yes
	SW: 0.9m	0.6m	0.4m	<b>No</b>
B7 Front Boundary Setbacks	6.5m	8.066m	no changes	N/A
B9 Rear Boundary Setbacks	6m	12.698m	no changes	N/A
D1 Landscaped Open Space and Bushland Setting	40% (245.24m <sup>2</sup> )	38.23% (234.4m <sup>2</sup> )	no changes	N/A

#### 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	No	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
C6 Building over or adjacent to Constructed Council Drainage Easements	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	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D2 Private Open Space	Yes	Yes
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
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

### **B3 Side Boundary Envelope**

#### Description of non-compliance

The modification comprises of a minor breach to the building envelope as a result of the infill of the existing balcony and extension of the approved roof.

#### 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:

The breach is minor and will not result in a visually dominant development.

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

#### Comment:

The proposed works are not expected to result in any unreasonable amenity impacts. The infill

of the balcony will result in increased privacy for the occupants of the subject site and the adjoining dwellings.

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

Comment:

The development 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 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.

## **B5 Side Boundary Setbacks**

### Description of non-compliance

The modification to the approved carport does not comply with the side boundary setback control. The carport is proposed to be setback 400mm from the south western side boundary.

### Merit consideration

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

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

Comment:

The carport is above an existing hardstand area, and as such will have no impact on deep soil landscaped areas.

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

Comment:

The carport is a modest single storey open structure and is not expected to be visually dominant when viewed from the adjoining site or the streetscape.

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

Comment:

The carport retains its approved single storey open structure and the minor extension to the south west is not expected to result in any unreasonable bulk or scale.

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

Comment:

The proposal is not expected to result in any unreasonable amenity impacts. Existing side boundary fencing will provide for a reasonable level of privacy.

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

Comment:

All existing views remain available.

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

### **D1 Landscaped Open Space and Bushland Setting**

The modification works are limited to the existing footprint of approved works.

There are no changes to the approved landscaped area under this modification and therefore no assessment required.

### **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 2021**

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. Mod2022/0058 for Modification of Development Consent DA2020/1180 granted for alterations and additions to a dual occupancy on land at Lot 2 SP 51300,2 / 25 Charles Street, FRESHWATER, 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
DAmo1003 Site Plan	28 October 2021	Rapid Plans
DAmo1008 Demolition Lower Ground Floor Plan	28 October 2021	Rapid Plans
DAmo1009 Demolition Ground Floor Plan	28 October 2021	Rapid Plans
DAmo1010 Demolition First Floor Plan	28 October 2021	Rapid Plans
DAmo1011 Demolition Roof Plan	28 October 2021	Rapid Plans
DAmo2001 Lower Ground Floor	28 October 2021	Rapid Plans
DAmo2002 Ground Floor	28 October 2021	Rapid Plans
DAmo2003 First Floor	28 October 2021	Rapid Plans
DAmo2004 Attic Floor	28 October 2021	Rapid Plans
DAmo2005 Roof	28 October 2021	Rapid Plans
DAmo3000 Section 1	28 October 2021	Rapid Plans

DAmod3001 Section 2	28 October 2021	Rapid Plans
DAmod4000 Elevations 1	28 October 2021	Rapid Plans
DAmod4001 Elevations 2	28 October 2021	Rapid Plans
DAmod4002 Elevations Front Fence	28 October 2021	Rapid Plans
DAmod5001 Material & Colour Sample Board	28 October 2021	Rapid Plans

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A383346_05	14 February 2022	Rapid Plans

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

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

f) The development is to be undertaken generally in accordance with the following:

<b>Waste Management Plan</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plans	21 December 2021	Rapid Plans

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

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

**Signed**



**Clare Costanzo, Planner**

The application is determined on 07/04/2022, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**