

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                            |              |
|----------------------------|--------------|
| <b>Application Number:</b> | Mod2019/0235 |
|----------------------------|--------------|

|   |  |
|---|--|
| <b>Responsible Officer:</b>               | Kye Miles  |
| <b>Land to be developed (Address):</b>    | Lot 2127 DP 752038, 8 Nargong Road ALLAMBIE HEIGHTS NSW 2100   |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2018/0559 granted for demolition work and construction of a dwelling house with a secondary dwelling |
| <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>                             | Sonia Maree Pender   |
| <b>Applicant:</b>                         | David Pender   |

|                                  |   |
|----------------------------------|---|
| <b>Application lodged:</b>       | 20/05/2019                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 28/05/2019 to 11/06/2019                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 1                                       |
| <b>Clause 4.6 Variation:</b>     | Nil                                     |
| <b>Recommendation:</b>           | Approval                                |

### 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 - B5 Side Boundary Setbacks

### SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 2127 DP 752038 , 8 Nargong Road ALLAMBIE HEIGHTS NSW 2100   |
| <b>Detailed Site Description:</b> | The subject site is located on the northern side of Nargong Road and is upon land zoned for R2 Low Density Residential Development. The site is a part of an approved but incomplete subdivision, and has a street frontage of 13.4m, depths of 33m and 38m respectively and an overall surveyed area of 540m <sup>2</sup> . Presently the site accommodates a detached dwelling house with associated outbuildings and structures. Topographically the land inclines from south the north (front to rear) by approximately 4.0m via a gradual slope. The land has vegetation throughout and a large mature tree in the south western corner. Surrounding developments consist of other detached dwelling houses of varying age, size and construction. |

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:

| Record Number | Description  | Determination                                       | Date       |
|---------------|--|---|------------|
| DA2016/0834   | Application for Torrens Title subdivision                  | Approved  | 20/01/2017 |
| DA2018/0559   | Construction of a Dwelling and attached Secondary Dwelling | Deferred Commencement Consent subject to conditions | 29/06/2018 |
| MOD2018/0635  | Removal of deferred commencement conditions, 4.55 (1)      | Approved  | 19/12/2018 |

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks alteration and additions to the approved DA 2018/0559 to include the following:

- Increase side setbacks.
- Addition of a sliding door to the rear of the dwelling.
- Re-design cladding.
- Changes to window positions and types.
- Addition of a deck adjacent to the secondary dwelling located to the west.
- To increase excavation levels.

## 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 **DA2018/0559**, 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   | <b>Yes</b><br>The modification, as proposed in this application, is considered to be of minimal environmental impact.   |
| (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and  | The 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 <b>DA2018/0559</b> .   |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require, or<br><br>(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, Warringah Local Environment Plan 2011 and Warringah Development Control 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 | None applicable.   |
| Section 4.15 (1) (a)(iii) – Provisions of  | Warringah Development Control Plan applies to this                     |

| Section 4.15 'Matters for Consideration'   | Comments  |
|--|---|
| any development control plan   | 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 2000 (EP&A Regulation 2000)  | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent 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, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</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 clause is not relevant to this application.</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 clause is not relevant to this application.</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><br/>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><br/>The proposed development will not have a detrimental social</p>   |



| Section 4.15 'Matters for Consideration'   | Comments  |
|--|---|
|  | <p>impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b><br/>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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

| Name:          | Address:                                  |
|----------------|---|
| Stephen Birnie | 10 Nargong Road ALLAMBIE HEIGHTS NSW 2100 |

The following issues were raised in the submissions and each have been addressed below:

- **Privacy**

The matters raised within the submissions are addressed as follows:

- **Privacy:** Concern has been raised that the proposed deck represents a further encroachment upon the privacy and amenity experienced by the occupants of No. 10 Naragong Road. Specifically, the submission identifies the proposed deck's western side setback and height as critical issues, which will enable more views into the adjoining site (No. 10 Naragong Road).

Comment:

The proposed deck is set back at minimum of 0.6m from the western side boundary and will be elevated 0.85m above existing ground level, additionally an existing 1.8m high fence is situated along the common boundary. Imposed conditions, will ensure that the proposed deck maintains a minimum 1.0m western side setback, while the existing vegetation screen along the western boundary will continue for the length of the proposed side deck.

Overall, it is considered that relatively low lying nature of the side deck will be adequately separated from the existing boundary fence. Additionally, the vegetation screen will ensure privacy is reasonably maintained for the occupants of the development and the occupants of adjoining properties.

## REFERRALS

| Internal Referral Body           | Comments  |
|----------------------------------|---|
| Landscape Officer                | No objections to the proposed modification with regard to landscape issues.                 |
| NECC (Bushland and Biodiversity) | No objections to the proposed modification with regard to bushland and biodiversity issues. |
| NECC (Development Engineering)   | No objections are raised to the proposed modifications.                                     |

| External Referral Body | Comments   |
|------------------------|--|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended. |

## 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)

Nil

## 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        | 7.2m     | 0.85m    | N/A         | Yes      |

#### 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                 | 6.9          | N/A            | Yes      |
| B5 Side Boundary Setbacks                     | 0.9m (West Boundary) | 1.8m         | 0.6m (Deck)    | No       |
|   | 0.9m (East Boundary) | 1m           | N/A            | N/A      |
| B7 Front Boundary Setbacks                    | 6.5m                 | 6.5m         | 9.9m           | Yes      |
| B9 Rear Boundary Setbacks                     | 6m                   | 7.3m         | 12.9m          | Yes      |
| D1 Landscaped Open Space and Bushland Setting | 40%                  | 42% (230sqm) | 40.8% (222sqm) | Yes      |

#### Compliance Assessment

| Clause                       | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------|------------------------------|-----------------------------|
| A.5 Objectives               | Yes                          | Yes                         |
| B3 Side Boundary Envelope    | Yes                          | Yes                         |
| B5 Side Boundary Setbacks    | No                           | Yes                         |
| B7 Front Boundary Setbacks   | Yes                          | Yes                         |
| B9 Rear Boundary Setbacks    | Yes                          | Yes                         |
| C4 Stormwater                | Yes                          | Yes                         |
| C5 Erosion and Sedimentation | Yes                          | Yes                         |
| C7 Excavation and Landfill   | Yes                          | Yes                         |
|                              |                              |                             |



| Clause  | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| C9 Waste Management                           | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting | Yes                          | Yes                         |
| 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                         |
| D12 Glare and Reflection                      | Yes                          | Yes                         |
| D14 Site Facilities                           | Yes                          | Yes                         |
| D20 Safety and Security                       | Yes                          | Yes                         |

#### Detailed Assessment

#### **B5 Side Boundary Setbacks**

##### Description of non-compliance

The proposed deck attached to the secondary dwelling exhibits a non-compliance western side boundary setback of 0.6m at the ground level. Due to the irregular shape of the property, the southern end of the deck's minimum site boundary setback will be 0.6m equating to a percentile variation of 33% to 0%. This non compliance occurs in a triangle and the variation will be to a length of 4.5m. The northern end of the deck's setback from the side boundary will be 1.3m which complies with the 0.9m side setback control.

##### 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 proposal provides 40.8% landscape open space which satisfies the requirement of Clause B5. The proposal ensures opportunities for deep soil landscape area to the front and the rear of the property. Therefore the proposal satisfies the objective.

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

##### Comment:

The proposed deck will be at a height of 0.85m, which is considered to be relatively low lying. In addition, conditions have been included within this report to ensure that the existing vegetation screen is continued for the length of the proposed deck. Therefore, the proposal will not be

visually dominant viewed from front, side or rear of the property.

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

Comment:

The low profile nature of the alterations and the proposed deck at the ground level located to the side, the proposal will not adversely effect the bulk and scale of the dwelling. Therefore the proposal satisfies this objective.

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

Comment:

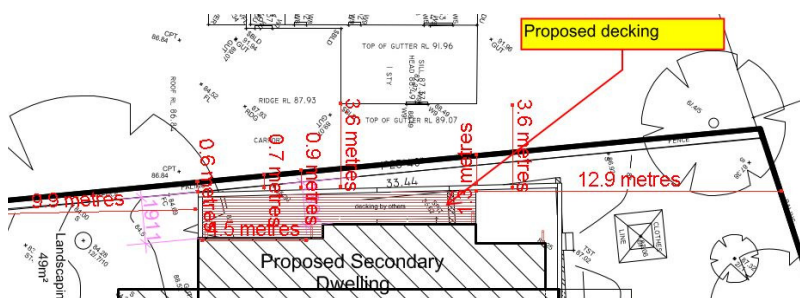
Located to the western boundary, proposed deck will be set back 3.6m from the adjacent dwelling No.10 Nargong Road illustrated in the plan below. The maximum elevated level of the proposed deck will be 0.85m from the existing ground level. Imposed conditions, will ensure that the deck maintains a minimum western side setback of 1.0m and the existing boundary planting screens the side deck. In addition, the existing boundary fencing will further assist in obscuring the direct line of sight from the adjoining property.

Therefore it is ensured that the proposal will not create any adverse impacts on level of privacy

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

Comment:

The proposal will not create any unreasonable sharing of views to and from public and private properties.



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.

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019**

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. Mod2019/0235 for Modification of Development Consent DA2018/0559 granted for demolition work and construction of a dwelling house with a secondary dwelling on land at Lot 2127 DP 752038,8 Nargong Road, ALLAMBIE HEIGHTS, 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

| <b>Architectural Plans - Endorsed with Council's stamp</b> |              |                    |
|--|--------------|--------------------|
| <b>Drawing No.</b>   | <b>Dated</b> | <b>Prepared By</b> |
| Sht - 01   | 19/05/2019   | Manor              |
| Sht - 05   | 19/05/2019   | Manor              |
| Sht - 06   | 19/05/2019   | Manor              |

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

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

**B. Add Condition - Boundary Planting, to read as follows:**

The existing boundary planting situated along the western boundary is to continue for the length of the proposed deck.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

**C. Add Condition - Side Deck Setback, to read as follows:**

The proposed deck is to have a minimum western side setback of 1.0m.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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

**Signed**



**Kye Miles, Planner**

The application is determined on 27/08/2019, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**