

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0521
<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 40 DP 7027, 532 Pittwater Road NORTH MANLY NSW 2100
<b>Proposed Development:</b>	Modification of Development Consent DA2021/0166 granted for demolition works and construction of a Boarding House pursuant to State Environmental Planning Policy Affordable Rental Housing 2009
<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>	Ali Mehfooz
<b>Applicant:</b>	Ali Mehfooz

<b>Application Lodged:</b>	04/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	13/08/2021 to 03/09/2021
<b>Advertised:</b>	13/08/2021
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks consent to modify DA2021/0116 in the following ways:

- **Deletion of Condition 11 (DA2021/0116)**

Condition DA2021/0116 reads as follows:

*11. Amendments to the approved plans*

*The following amendments are to be made to the approved plans:*

(i) Room "L10" shall be clearly shown as the "Managers Room" including 1 carparking space for the residing manager.

(ii) The private terrace for Room "L10" shall be enlarged to a minimum of 8.0 square metres (sqm) with minimum dimensions of 2.5 metres (m)

(iii) A window (to match W01-03, height and size) is to be added to the eastern brick wall for the 'Common Lounge' room.

Details demonstrating compliance are to be shown on the Construction Certificate plans and submitted to the satisfaction of the Certifying Authority.

Reason: To ensure development maintains respond to design considerations for internal or external amenity.

The plans submitted with the subject modification application have made the amendments listed above and therefore are to be included in the stamped plans as approved with the subject application. Condition 11 is therefore deleted as part of the subject modification application.

- **Amendments to Plans**

- As a result of the additional car parking space, the driveway has been lengthened by 2.5m. The number of bicycle spaces has been reduced from 11 to 7 with the approved number of motorcycle spaces remaining unchanged. The common room and Room "L10" have been relocated 500mm to the north to ensure sufficient landscaping at the end of the driveway. All changes are supported by Council's Landscape Officer, Traffic Engineer, Development Engineer and Transport for NSW.
- The plans submitted with the subject modification application have allocated Room "L10" to the Building Manager. The plans have been amended to include an additional car parking space allocated for the Manager in Room "L10" which now creates six (6) off-street car park spaces and is consistent with the the SEPP requirements which require one (1) parking space for each 5 boarding rooms and no more than 1 parking space for a live in Manager. Bicycle and motorcycle parking provisions remain acceptable and is supported by Council's Traffic section.

- **Deletion of approved plan "D-S-0XX Communal Terrace Plan**

The communal terrace located on the lower ground floor has been increased in size in accordance with the Communal Terrace Plan D-S-0XX dated May 2021. As a result, the following plans listed in Condition 1 are to be revised in accordance with the Communal Terrace Plan:

- D-S-01 Site Plan \*, dated May 2021 and prepared by Miles Winter Pty Ltd;
- D-P-01 Lower Floor Plan \*, dated May 2021 and prepared by Miles Winter Pty Ltd; and
- D-S-02 Landscape Plan \*, dated May 2021 an prepared by Miles Winter Pty Ltd

The revised plans submitted with the subject modification are as follows and are to be included in Condition 1.

- D-S-01 Site Plan - DA Modification, dated July 2021 and prepared by Miles Winter Pty Ltd;
- D-P-01 Lower Floor Plan - DA Modification, dated J 2021 and prepared by Miles Winter Pty Ltd; and
- D-S-02 Landscape Concept - DA Modification, dated July 2021 an prepared by Miles Winter Pty Ltd.

The Communal Terrace Plan D-S-0XX dated May 2021 is therefore deleted from Condition 1.

## 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 - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B7 Front Boundary Setbacks

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 40 DP 7027 , 532 Pittwater Road NORTH MANLY NSW 2100
<b>Detailed Site Description:</b>	<p>The site is located on the eastern side of Pittwater Road at the intersection between Hope Street and Corrie Road. The site has a total area of 789.7 square metres (sqm) with a frontage of 15.2 metres (m) and a depth of 51.8m. The site is rectangular in shape and with a fall of some 3.5 metres from north (rear) toward Pittwater Road.</p> <p>Vehicular access to the site is from Pittwater Road which has a concrete pedestrian path link to Warringah Mall / Brookvale (700m north). The site has not been identified as a heritage item, and is not in a heritage conservation area, nor in proximity to a heritage item or heritage conservation area.</p> <p>A mixture of single and two storey dwellings are</p>

generally the predominant land use in the area near the site (within 100m) and the Warringah Golf Course is opposite the site. Detached dwelling houses adjoin the site to the west and north. A child care facility adjoins the site on the eastern boundary. Other land uses in the vicinity of the site (within 200m) include a service station / carwash and sports facilities.

The existing site is currently occupied by a dwelling house with parking facilities and domestic outbuildings.

Map:



## SITE HISTORY

Development Application No. DA2020/0512 for a 12 room Boarding House was withdrawn by the applicant on 11.9.2020

Pre-lodgement Meeting (No. PLM2020/0294) for the construction of a 12 room Boarding House was reviewed Council's Design and Sustainability Review Panel on 17.12.2020.

Development Application No. DA2021/0166 - Demolition works and construction of a Boarding House pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009. Approved at Northern Beaches Local Planning Panel on 17 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 DA2021/0166, 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 proposed works maintain a compliant level of landscaped open space approved for the site.</li> <li>• No trees are proposed to be removed.</li> <li>• The subject site is not located in bushfire prone land.</li> <li>• The proposed works are not considered to impact on the stability of the site.</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 DA2021/0166 for the following reasons:</p> <ul style="list-style-type: none"> <li>• Overall numerical compliance with the original proposal is largely unchanged (noting that the LOS is slightly reduced however remains compliant).</li> <li>• The development is substantially the same given the alterations and additions improve the functionality of the site. The built form controls remain relatively unchanged, hence altering the overall bulk and scale of the development when viewed from Pittwater Road and surrounding properties.</li> <li>• From both qualitative and quantitative perspectives, the proposal will remain</li> </ul>

Section 4.55(1A) - Other Modifications	Comments
	<p>substantially the same as at which was approved.</p> <ul style="list-style-type: none"> <li>• The use of the site will remain unchanged.</li> <li>• The proposal is unlikely to increase impacts upon the natural and built environments and the amenity of surrounding site</li> </ul>
<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 the notification or advertising of applications for modification of a development consent, and</p>	<p>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.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

#### 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 'Matters for Consideration'	Comments
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 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 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 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>
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</p>

Section 4.15 'Matters for Consideration'	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/08/2021 to 03/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>This modification is for the alteration of a previously approved development application. Alterations include the addition of another car park, resulting in the minor extension of the driveway, reduction in total bike spaces, as well as the relocation of the common room and Lodger 10 500mm north to ensure sufficient landscaping at the end of the driveway.</p> <p>An updated Landscape Plan has been provided to reflect the latest building and driveway layout, with minor changes to proposed</p>



Internal Referral Body	Comments
	<p>landscape areas. This updated Landscape Plan largely addresses concerns raised in the previously approved Development Application regarding tree substitution at the front of the site. For this reason, <i>Condition 6 - Amended Landscape Plan</i> as per the original determination may be removed, subject to the completion of landscape works as indicated on the amended Landscape plans provided with this application. It is noted that <i>Cupaniopsis anacardioides</i> has been proposed within the site. This tree species has been identified as an environmental weed and is therefore considered an undesirable species. It is therefore recommended that this tree be substituted for another native alternative which can be addressed through conditions of consent rather than the need for another amended Landscape Plan to be provided.</p> <p>It should be noted that original landscape conditions are per the approved development application are to remain enforced, excluding <i>Condition 6 - Amended Landscape Plan</i>, particularly those revolved around existing tree protection, the appointment of a Project Arborist and landscape maintenance.</p>
NECC (Development Engineering)	Development Engineering has no objection to the modification. No additional condition is required.
Strategic and Place Planning (Urban Design)	The proposed modifications comprise of an additional car parking space and changes to the communal terrace and lodger 10 private balcony in accordance to DSAP comment and DCP compliances. The changes are minor and will not result any undesirable impacts on the originally approved design.
Traffic Engineer	It is noted that the revised development proposal now includes 6 offstreet carpark spaces but also now includes provision for an on-site manager and a managers parking space. This is consistent with SEP requirements which require 1 parking space for each 5 boarding rooms AND no more than 1 parking space for a live in manager. The parking requirements of the SEPP are therefore satisfied. Bicycle and Motorcycle parking provisions remain acceptable. The previous comments and conditions submitted with regard to DA2021/0166 for the boarding house development on this site remain applicable to Mod2021/0166.

External Referral Body	Comments
Integrated Development - NSW Roads and Maritime Services - Roads Act 1993 (s138 Works on classified road where Council is not the consent authority)	Correspondence from Transport for New South Wales (TfNSW) was received on 23 August 2013. TfNSW has review the modification application and has raised no objections, subject to the TfNSW requirements in the previous TfNSW letter dated 28 July 2020 remaining applicable.

## 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 70 - Affordable Housing (Revised Schemes)**

The proposal is not nominated as a development that has been made pursuant to State Environmental Planning Policy (SEPP) No.70 Affordable Housing (Revised Schemes). Therefore no further consideration of this SEPP is applicable.

The principle assessment / building design requirements under the heading SEPP (Affordable Rental Housing) 2009 however applies as per this report.

### **SEPP (Affordable Rental Housing) 2009**

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

### **Division 3: Boarding houses**

#### **Clause 25: Definition**

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

*"(a) is wholly or partly let in lodgings, and  
(b) provides lodgers with a principal place of residence for 3 months or more, and  
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and  
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

*but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".*

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	<b>Consistent</b> The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011, pursuant to the overriding powers of the ARH SEPP.

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.  <b>Note: Accessible area</b> means land that is within:  (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	<b>Consistent</b> The modification does not alter the accessibility of the site to Public transport.  Transport NSW ) have no comments or conditions with regard to the proposed modification.
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.

Clause 28: Development may be carried out with consent

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Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

#### Clause 29: Standards that cannot be used to refuse consent

Not applicable

Standard	Requirement	Proposed	Compliant/Comment
<b>(1) Density and scale</b> A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Not applicable	Not applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:  (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or  (ii) 20% of the existing maximum floor space	The site is not within a zone that permits residential flat buildings and the site does not contain a heritage item and is not in a heritage conservation area.  (i) The site is not within an area that that has a floor space ratio.  (ii) The site is not within an area that that has a floor space ratio to apply a percentage.	Not applicable

	ratio, if the existing maximum floor space ratio is greater than 2.5:1.		
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
<b>(a) building height</b>	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The maximum building height complies with the 8.4m building height control under the WLEP 2011 (as per existing ground level).	Compliant - No change to approved as part of subject modification application.
<b>(b) landscaped area</b>	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The proposed landscaping is compatible with the existing character of the local area. The front setback has maintained deep soil planting in the setback areas to adjacent neighbours and the street to soften / partly screen the proposed built form. The proposed modification provides additional landscaping at the end of the driveway which is supported. The setback to Pittwater Road will be retained as deep soil planting (of 1m or more depth) as shown on the submitted landscape plan.	Consistent
<b>(c) solar access</b>	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	Communal living room (Ground Floor Level) provides outdoor access terrace area that achieved northern and eastern direct sunlight however due to the ground level position and adjacent rooms of L08 and L09, including access walkway and stairs the	Consistent



		<p>common room gets 2hrs of sunlight between 9-11am. It was recommended that an east facing window be provided to enhance the light within the common room as the only other available window is south facing. This has been provided as part of the subject modification application.</p> <p>The communal terrace area has a northerly direct solar access to the rear yard and this outdoor areas will receive 3 hours of direct solar access.</p>	
<b>(d) private open space</b>	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m<sup>2</sup> with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m<sup>2</sup> with a minimum dimension of 2.5m is provided adjacent to that accommodation,</p>	<p>(i) A private open space area of more than 20 sqm is provided with minimum dimensions of more than 3.0m adjacent communal living room (below room 10).</p> <p>(ii) The private open space balcony area proposed for boarding room L10 is 2.1m x 3.8m (7.98sqm). A condition (Condition 11 of DA2021/0166) was imposed to ensure the private open space balcony be enlarged to a minimum of 8sqm with a minimum dimension of 2.5m.</p>	Compliant. The proposed plans as part of the subject modification application increased the size of the private open space balcony to 9sqm.
<b>(e) parking</b>	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a</p>	The building contains 10 boarding rooms including an on-site manager room.	Compliant. - The subject modification proposes an additional car parking space for the residing manager.

	<p>social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(jia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>The development is not being carried out by a social housing provider.</p> <p>Five (5) car spaces are required for lodgers (including one for a live in building manager).</p>	
<b>(f) accommodation size</b>	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	<p>Excluding kitchen bathroom space for Lodger rooms:</p> <p>Room 01 = 25 sqm            (2) (Accessible room)            Room 02 = 18 sqm (2)            Room 03 = 18 sqm (2)            Room 04 = 18 sqm (2)            Room 05 = 18 sqm (2)            Room 06 = 18 sqm (2)            Room 07 = 18 sqm (2)            Room 08 = 18 sqm (2)            Room 09 = 22 sqm (2)            Room 10 = 18 sqm (2)</p>	Compliant - No change proposed as part of the subject modification application.
	(3) A boarding house may have private	All rooms have a private kitchen and bathroom	Consistent - No change proposed as part of the

	kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	facilities.	subject modification application.
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	The proposal meets the requirements of this Division in a satisfactory manner, subject to conditions.	Satisfactory

#### Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	A communal living room is located at the rear (ground floor level) with an adjacent open spaces area towards the rear yard.	Compliant - The communal room is considered to maintain an appropriate level of amenity as assessed in the original DA (DA2021/0166)
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m <sup>2</sup> ,	No boarding rooms have an area, excluding the kitchen and bathroom facilities that exceed 25sqm.	Compliant - No change
(c) no boarding room will be occupied by more than 2 adult lodgers,	This has been included in the operational plan of management (OPM) that no rooms are to have more than 2 person occupancy	Compliant subject to conditions to restrict occupancy as per the OPM. No change as proposed as part of the subject modification application.
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each room has its own kitchenette and bathroom facilities. There is also a bathroom and kitchenette within the communal rooms.	Compliant - No change as proposed as part of the subject modification application.
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The boarding house 10 lodger rooms (maximum 20 persons). A Managers room is available, to be nominated by condition. 10 room boarding house proposed.	Compliant - No change as proposed as part of the subject modification application.
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of	Not applicable	Not applicable

the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,		
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	Eight (8) bicycle spaces and four (4) motorcycle spaces were approved as part of DA2021/0166. The modification application proposes two (2) motorcycle spaces and seven (7) bicycle spaces.	Compliant - the modification application remains compliant.
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	Not applicable	Not applicable

#### Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Savings and transitional provisions of the SEPP ARH apply to this development application for this clause (ref.Clause 54C).

#### Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

#### Comment:

The original DA (DA2021/0166) was assessed against this principle and was considered compatible with the streetscape in regard to the bulk, scale and massing of the development is and consistent with this principle.

In this regard, it is considered that the proposed modification application will ensure the scale of the

development is compatible with the streetscape and consistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

The works proposed as part of the subject modification application will maintain the setbacks as approved as part of the original DA and will present as a well articulated building which will present a similar appearance to the streetscape.

In this regard, the development is considered to be compatible with the scale of surrounding development and consistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The subject modification application does slightly alter the existing approved landscaped open space for the site however will maintain compliance and will ensure the building will not unreasonably dominate the proposed buildings's natural setting.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and is consistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The proposed building includes materials and colours, and a roof form that retains a visual appearance comparable with the residential context within which the proposed building is to be located. Accordingly, it can be concluded that the proposal is consistent with this principle. In this regard, the development is considered to be consistent with this principle in terms of colours, materials and roof style.

In this regard, the development is considered to be consistent with the fourth principle.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.



Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The proposed alterations and additions do not significantly alter the existing development potential of surrounding sites with the modification maintaining a compliant level of landscaped open space.

Privacy

The proposed alterations and additions to the Boarding House as part of the subject modification application will not alter the amenity of the neighbouring residential properties.

Overshadowing

Shadow diagrams have been prepared and demonstrate that no unreasonable loss of sunlight is created to adjacent residential land. The proposed development complies with the requirements of Part D6 of Council's DCP in relation to access to sunlight.

Noise

The proposed modification will not alter the operation of the Boarding House. Any issues surrounding noise were addressed satisfactorily as part of the original DA.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality.

This matter does not warrant the refusal of the Development Application.

Conclusion

The development is satisfactory in terms of consistency with the SEPP ARH, including the surrounding local character, roof design, privacy, landscaped open space buffers, parking, access and side setbacks and amenity considerations of noise disturbance likely from the communal open space.

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

A BASIX certificate has been submitted with the application (see Certificate No. 1096296M\_03 and 11 May 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
<b>Water</b>	40	Target 40
<b>Thermal Comfort</b>	Pass	Concession Target Pass
<b>Energy</b>	45	Target 45

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

## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

### Comment:

The proposal was not referred to Ausgrid. Therefore no objections are raised and no conditions are recommended.

### Other Service Infrastructure Authorities

Transport NSW (formerly NSW Roads and Maritime Service) provided a referral response with the original development application (DA2021/0166) on 22.3.2021 and made no comment, no objections and no service infrastructure conditions for the proposal. The subject modification was referred with comments received on the 23.08.2021 with no objections raised. The No other Service Authority referral issues are raised pursuant to the SEPP.

## 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	8.4m	8.4m - no change	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
6.1 Acid sulfate soils	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 (m) (EGL to eaves)	East / West: 5.0m to 6.5m (side walls)	No change	Yes
		North / South: 6.8m to 8.1m (end walls)	No change	No - approved
B3 Side Boundary Envelope	4m	East: within envelope	No change	Yes
		West: Breach of envelope (1.2m to 0.2m - 19% breach)	No change	No - approved
B5 Side Boundary Setbacks	E: 0.9m	2.5m - 3.0m (Ground) 2.36m - 6.6m (Upper floor and Loft)	No change	Yes
	W: 0.9m	2.0m - 3.6m (ground) 2.0m - 2.4m (Upper floor and loft)	No change	Yes
B7 Front Boundary Setbacks	6.5m	6.498m (Ground) 9.4m (Upper floor and loft)	No change No change	No - approved Yes
B9 Rear Boundary Setbacks	6m	6.7m - 10.3m (Ground) 6.1m (Balcony / Terrace) 6.1m - 7.8m (Upper floor and loft)	No change No change No change	Yes
D1 Landscaped Open Space and Bushland Setting	40% (316sqm)	47% (332sqm)	40% (316sqm)	Yes

### Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	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
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
E11 Flood Prone Land	Yes	Yes

#### Detailed Assessment

#### **B1 Wall Heights**

The works approved under Development Application DA2021/0166 involved a 8.1m maximum wall height, which exceeds the 7.2m numeric requirement. Despite this, the numeric non-compliance was supported on merit due to consistencies with the objectives of the wall height provision.

In assessing this Section 4.55(1A) Modification, it is noted that the modified works do not alter the approved maximum wall height to the boarding house. Therefore, no further consideration of this control is required for the purpose of this assessment.

#### **B3 Side Boundary Envelope**

The works approved under Development Application DA2021/0166 involved a non-compliant side boundary envelope along the eastern elevation of the upper brick tower that is part of the Common room and the Managers Room.. Despite this, the numeric non-compliance was supported on merit due to consistencies with the objectives of the side boundary envelope provision.

In assessing this Section 4.55(1A) Modification, it is noted that the modified works do not alter the approved side boundary envelope to the boarding house. Therefore, no further consideration of this control is required for the purpose of this assessment.

### **B7 Front Boundary Setbacks**

The works approved under Development Application DA2021/0116 involved a 6.498m setback to the front boundary which falls short of the required 6.5m control. Despite this, the numeric non-compliance was supported on merit due to consistencies with the objectives of the front setback provision.

In assessing this Section 4.55(1A) Modification, it is noted that the modified works do not alter the approved front setback to the boarding house. Therefore, no further consideration of this control is required for the purpose of this assessment.

### **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. Mod2021/0521 for Modification of Development Consent DA2021/0166 granted for demolition works and construction of a Boarding House pursuant to State Environmental Planning Policy Affordable Rental Housing 2009 on land at Lot 40 DP 7027,532 Pittwater Road, NORTH MANLY, 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>
D-S-01 Site Plan	July 2021	Miles Winter Pty Ltd
D-P-01 Lower Floor Plan	July 2021	Miles Winter Pty Ltd
D-P-02 Upper Floor Plan	July 2021	Miles Winter Pty Ltd
D-P-03 Roof Plan - Loft Level	July 2021	Miles Winter Pty Ltd
D-E-01 Elevations 1	July 2021	Miles Winter Pty Ltd
D-E-02 Elevations 2	July 2021	Miles Winter Pty Ltd
D-E-04 External Finishes	July 2021	Miles Winter Pty Ltd
D-E-05 Site Sections	July 2021	Miles Winter Pty Ltd
Detailed Typical Lodger D-D-01	July 2021	Miles Winter Pty Ltd
Detailed Typical Lodger Sections D-D-02	July 2021	Miles Winter Pty Ltd
Detailed Accessible Lodger & Common Room D-D-03	July 2021	Miles Winter Pty Ltd
Detailed Lodger 9 - 10	July 2021	Miles Winter Pty Ltd

#### Engineering Plans

Drawing No.	Dated	Prepared By
Roof Plan and Stormwater Concept D-P-04	July 2021	Miles Winter Pty Ltd

#### Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1096296M_03	19 May 2021	Building Sustainability Assessments
Plan of Management Boarding House	Feb 2021	Ali Mehfooz
BCA Access Compliance Report	19.2.2021	Lachlan Miles Design
Preliminary Landslip Assessment E24685.G02_Rev 1	1.3.2021	El Australia
D-S-04 Site Accessibilty Plan	May 2021	Miles Winter Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Concept D-S-02	July 2021	Miles Winter Pty Ltd

#### Waste / Construction Management Plan

Drawing No/Title.	Dated	Prepared By
Demolition Waste Management Plan	18.2.2021	Ali Mehfooz
D-S-03 Site Waste Management Plan	May 2021	Miles Winter Pty Ltd

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail. (Note: "interim/final" allows a Certifier to select an appropriate time or work stage to satisfy requirements of the condition)

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

#### B. Delete Condition No. 6 - Amended Landscape Plan

#### C. Delete Condition No. 11 - Amendments to the approved plans

#### D. Add Condition No. 47A - Landscape Completion - to read as follows:

Landscaping is to be implemented in accordance with the approved Amended Landscape Plan, inclusive of the following conditions:

i) substitute the proposed *Cupaniopsis anacardioides* with a native alternative, minimum 75L pot size. Suggested species include: *Banksia serrata*, *Banksia integrifolia*, or *Tristaniopsis laurina*.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

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

**Signed**



**Penny Wood, Planner**

The application is determined on 21/10/2021, under the delegated authority of:



**Rebecca Englund, Acting Development Assessment Manager**