

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0537
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Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 83 DP 618704, 19 Mons Road NORTH BALGOWLAH NSW 2093
Proposed Development:	Modification of Development Consent DA2020/0513 granted for demolition works and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	John Dominic Philipsz Gemma Louise Philipsz
Applicant:	Classic Country Cottages

Application Lodged:	27/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/11/2020 to 17/11/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification application proposes to correct an error within the approved plans for DA2020/513. The error is in relation to the RL's approved for the construction of a new two (2) storey dwelling. The approved plans indicate the following levels:

Garage - RL99.46
Ground Floor - (entry) RL100
Ground Floor - (rear) RL99.10
First Floor - 102.71
Approximate Ridgeline - RL107.1

DA2020/0513 approved a building height of 7.8m which complies with the building height development

standard stipulated for the site under the WLEP 2011.

The subject modification application proposes to correct the levels indicated on the approved plans which the applicant has stated are typographical errors and are not reflective of the approved dwelling.

The levels indicated on the proposed plans are as follows:

Garage - RL99.94
Ground Floor (entry) - RL100.48
Ground Floor (rear) - RL99.58
First Floor - RL103.19
Ridgeline (Approximate) - RL107.58

The levels indicated on the survey and site plan submitted with the subject modification application have not changed as approved in the original application (DA2020/0513). The location of the proposed dwelling within the subject site has not changed with all dimensions (wall heights, setbacks, building height, roof form) of the built form remaining unchanged. However it would appear that through a detailed assessment of the proposed plans, the overall height of the building is measured at 8.07m. The building height has not increased however, was inaccurately calculated under DA2020/0513. As indicated on the site plan, the natural ground level of RL99.5 is located approximately below the amended ridgeline (RL107.58) allowing a more accurate assessment of the proposed building height. The plans submitted with the modification application have rectified the discrepancies as approved in DA2020/0513.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 83 DP 618704 , 19 Mons Road NORTH BALGOWLAH
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	NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Mons Road.</p> <p>The site is irregular in shape with a surveyed area of 1811m². The site incorporates an access handle to Mons Road to the east and a drainage easement "handle" to the west.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and retaining walls.</p> <p>The site has a westerly aspect with a moderate slope towards the western rear boundary.</p> <p>The site has no significant vegetation or landscape features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA2020/0513: Approved 18 August 2020 - Demolition works and construction of a dwelling house.
- MOD2020/0511: Withdrawn 20 October 2020.

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 DA2020/0513, 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>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The amendments to the modified plans propose to amend the RL's at the garage, ground floor level and first floor level and highest point of the roof (approximate ridgeline) approved as part of DA2020/0513. A review of the site plan submitted with the modification application has revealed that contour RL99.5 is indicative of the existing ground level situated below the highest point of the proposed dwelling (approximate ridgeline RL107.58). This is an approximate indication of the existing ground level at this point which would result in the dwelling measuring 8.08m in height. A review of the section submitted with modification application (Dwg No. 07 Rev D, 30/09/2020 prepared by Classic Country Cottage) supports this calculation with the dwelling measuring 8.07m in height at the same location within the subject site. It is therefore assumed that the overall height of the dwelling as measured accurately is 280mm higher than originally assessed. The proposed height will remain compliant with the building height development standard of 8.5m stipulated in the WLEP 2011.</p> <p>It is noted that the location of the dwelling within the site and the front, rear and side setbacks as approved in the original development application (DA2020/0513) remain unchanged.</p>

Section 4.55(1A) - Other Modifications	Comments
	<p>Shadow diagrams have been submitted with the modification application. The applicant (Classic Country Cottages) has certified the shadow diagrams on the <i>Development Application, Declarations Form 20/21</i> provided with the subject modification documentation. Whilst the proposed plans have been amended to correct the typographical errors approved on the original DA, the shadow diagrams are taken from the RL's of the site and the survey and not the typographical error.</p> <p>The outcome of the detailed assessment undertaken for DA2020/0513 concluded that the proposed works do not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation. Given there is no change to the built form of the dwelling as approved, the assessment undertaken as part of DA2020/0513 still applies and does not change.</p>
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The 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 DA2020/0513 for the following reasons:</p> <p>The modification application submitted a Site Plan (Rev C, prepared by Classic Country Cottages dated 4/5/2020) which was approved under DA2020/0513. The site plan has not changed as part of the subject modification application. The site plan indicates levels taken from the survey submitted with the original DA (prepared by C.M.S Surveyors Pty Limited, dated 25/06/14 & 9/4/2019) to accurately assess the height of the proposed dwelling. Along the southern boundary, RL99.32 is approximately located at the south western corner of the garage with contour RL100 approximately located slightly forward (east) of the south eastern corner of the garage. Measurements taken along the southern elevation at these two points (RL99.32 and RL100) to the amended ground floor level RL99.94 (garage) reveal that the amended RL's are an accurate indication of where the dwelling is proposed in relation to the existing ground level.</p> <p>The proposed height of the building at approximately 8.07m has been confirmed through a scaled measurement taken off the proposed Section 1 drawing submitted with the modification (Dwg 07 Rev D) and through a detailed assessment of the approximate location of contour (RL99.5) as indicated below the ridgeline (RL107.58).</p> <p>As a result, the amended RL's can be seen to correct a typographical error which does not change the height or location of the dwelling and can therefore be considered substantially the same development.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the</p>	<p>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.</p>

Section 4.55(1A) - Other Modifications	Comments
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	
(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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – 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&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&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&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&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&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/This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&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&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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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

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 03/11/2020 to 17/11/2020 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:
Mr John Alfred Norman	23 Mons Road NORTH BALGOWLAH NSW 2093

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

- The development is non-compliant with the southern boundary envelope
- Solar Access

The matters raised within the submissions are addressed as follows:

- Non-compliance with the southern boundary envelope
Comment:
Concern is raised regarding the change in RL's in relation to the existing ground levels indicated on the site plan. The submission states that the proposed first floor level is RL103.19 and when measured from the ground levels RL98 and RL98.5 (based on the contours indicated on the site plan) the ground to first floor level would measure between 4.69m and 5.19m which is accurate. Given the amended RL's are indicative of the ground levels provided in the site plan, Council can be satisfied that the side boundary envelope has been depicted accurately. Therefore the amended plans do not alter the existing side boundary envelope as assessed as part of DA2020/0513 and is considered compliant.

The building height has been measured using the RL's depicted on the Site Plan taken from the

survey submitted with the original development application (DA2020/0513) The height of the building measures 8.07m as measured from Section 1 of Dwg 07 Rev D as submitted with the subject modification. Whilst this is an increase in the overall height of the dwelling as measured from the original DA at 7.8m the height of the dwelling when measured along the northern and southern elevations has not changed therefore ensuring the side boundary envelope as assessed under DA2020/0513 has not changed as a result of the amended RL's.

- **Solar Access**

Comment:

As discussed above, the submission raised concern that the side boundary envelope had not been depicted accurately along the southern boundary and as a result, would impact on the amount of solar access received at 23 Mons Road. An assessment of the ground levels (unchanged) as depicted on the site plan in relation to the amended ground floor RL, first floor RL and the ridgeline RL indicate that the maximum building height as originally measured was inaccurate. The height measured under the assessment of DA2020/0513 was 7.8m. A detailed assessment of the height under the subject modification indicates that the maximum height when measured from existing ground level (RL99.5) to the ridgeline (RL107.58) is 8.07m. Whilst the height of the building is approximately 270mm higher than first assessed, the siting of the building on the proposed plans and the relative shadow diagrams have not changed and therefore the shadow diagrams provided with the modification accurately depict the shadows cast towards adjoining properties, in particular towards 23 Mons Road.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The proposed modification to the garage level is acceptable. No objection to approval with no additional or modified conditions of consent 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)

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 (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 given the nature of the modification application to rectify an error on the drawings.

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	7.8m	8.08m	N/A	Yes

*The Site Plan (Dwg No. 1 Rev C, dated 4/05/2020) indicates contour RL99.5 sits approximately below the highest point of the dwelling (RL107.58). This provides an approximate height of 8.07m. A measurement of the building height taken from Section 1 (Dwg 07 Rev D, dated 30/09/2020 prepared by Classic Country Cottages) indicates a maximum building height of 8.08m which is consistent with the natural ground level RL99.5 estimated to be located below the ridgeline RL107.58. This is discussed in more detail throughout the report.

Compliance Assessment

Clause	Compliance with Requirements

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	6.9m	No change	Yes
B3 Side Boundary Envelope	4m (south)	Within envelope	No change	Yes
	4m (north)	Within envelope	No change	Yes
B5 Side Boundary Setbacks	0.9m (south)	1.38m	No change	Yes
	0.9m (north)	7.1m	No change	Yes
B7 Front Boundary Setbacks	6.5m	6.6m	No change	Yes
B9 Rear Boundary Setback	6.5m	19.9m	No change	Yes
D1 Landscaped Open Space and Bushland Setting	40% (544.08sqm)	57% (778.4sqm)	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	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
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 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. Mod2020/0537 for Modification of Development Consent DA2020/0513 granted for demolition works and construction of a dwelling house on land at Lot 83 DP 618704, 19 Mons Road, NORTH BALGOWLAH, 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
01 Rev C	30 September 2020	Classic Country Cottages
03 Rev E	30 September 2020	Classic Country Cottages
04 Rev E	30 September 2020	Classic Country Cottages
05 Rev D	30 September 2020	Classic Country Cottages
06 Rev D	30 September 2020	Classic Country Cottages
07 Rev D	30 September 2020	Classic Country Cottages
08 Rev D	30 September 2020	Classic Country Cottages

09 Rev D	30 September 2020	Classic Country Cottages
10 Rev C	30 September 2020	Classic Country Cottages

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.

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

Signed



Penny Wood, Planner

The application is determined on 15/02/2021, under the delegated authority of:



Anna Williams, Manager Development Assessments