



**Corona Projects**

## **SECTION 4.55 (2) MODIFICATION**

DA2019/1395

Modification:

Reduction of scope – Alterations and additions

To an existing dwelling

**45 Earl Street, Beacon Hill**

March 2022

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## PROJECT DETAILS

Client:	Mr Peter Conduit
Subject land:	45 Earl Street, Beacon Hill 2100
Lot Description:	Lot 36, DP25164
Development Application no.	DA2019/1395
Date of determination:	2 April 2020
Description of original proposal:	Alterations and additions to a dwelling house
Proposed modification:	Reduction of scope – Alterations and additions To an existing dwelling

**The report is prepared by** Joseph Chan  
Bachelor of City Planning (Hons) (UNSW)




**The report is reviewed by** Mathew Fortunato  
Bachelor of Architecture and Environment (USYD)

Project Code: J001203

I certify that the contents of the Statement of Environmental Effects to the best of my knowledge, has been prepared as follows:

- In accordance with Section 4.55 of the Environmental Planning Assessment Act 1979 and Division 12, Clause 117 or the Environmental Planning and Assessment Regulation 2000;
- The statement contains all available that is relevant to the environmental impact assessment of the proposed development;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

**Quality Management**

	<b>Name</b>	<b>Date</b>	<b>Signature</b>
Prepared by	<b>Joseph Chan</b>	09.03.2022	
Checked by	<b>Mathew Fortunato</b>	10.03.2022	
Approved for issue by	<b>Joseph Chan</b>	10.03.2022	

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## 1.0 INTRODUCTION

This Statement has been prepared in support of a Section 4.55(2) Application under Part 4 of the Environmental Planning and Assessment Act 1979 (the Act) for an amendment to the approved plans under Condition 1 of Development Application DA2019/1395 at 45 Earl Street, Beacon Hill.

The original application was for alterations and additions to a dwelling house. The application was determined with the granting of consent on 2 April 2020.

The Section 4.55 modification seeks approval for the following amendment to the approved plans:

- Reduction of scope: Reduce the extent of the approved alterations and additions to the existing dwelling.
- Minor alterations to internal layout
- Addition of rear deck

The purpose of this Statement is to:

- Describe the site to which the application applies and its context;
- Describe the proposed development
- Describe the legislative framework against which the application is to be assessed and determined; and
- Provide an assessment of the environmental impacts in accordance with the Section 4.15 of the EP&A Act 1979.

The following documents are submitted for this Development Application, along with this Statement of Environmental Effects.

Plan Name	Prepared by	Date
Architectural Plans	Corona Projects	March 2022
Survey	Altitude Surveys	17 January 2022
BASIX Certificate	Alex Jankov Design Studio	24 March 2022

## 2.0 SITE ANALYSIS & CONTEXT

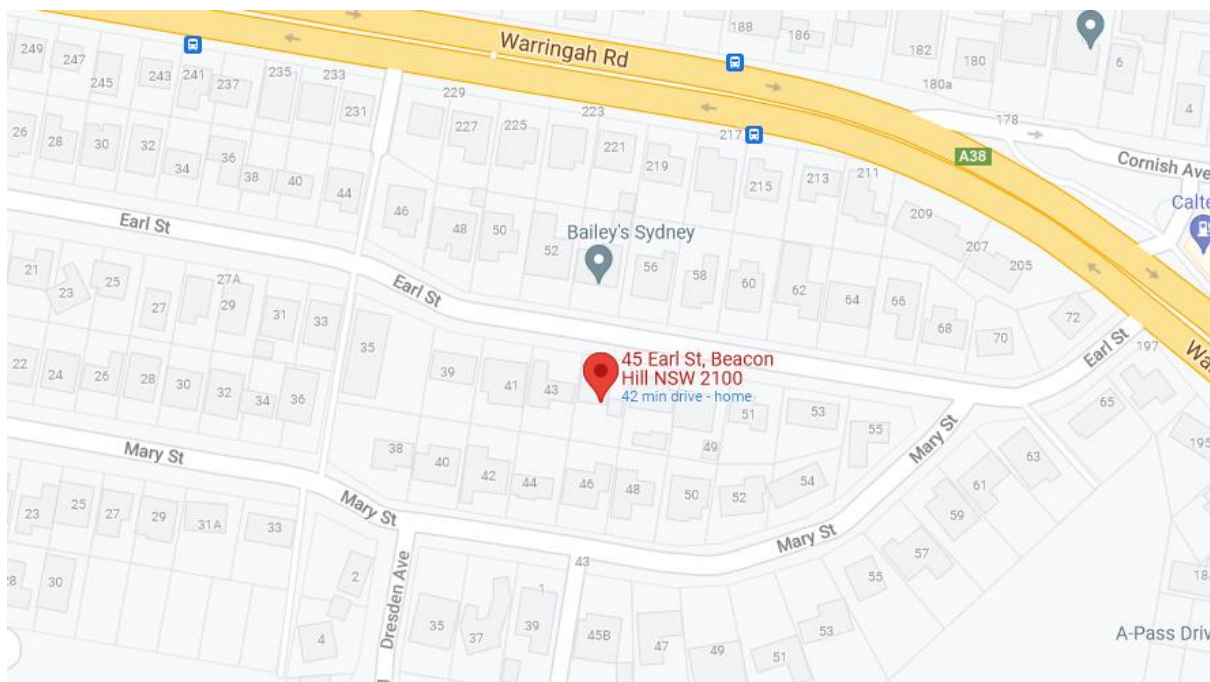
### 2.1 The Site

The site is located at 45 Earl Street, Beacon Hill and is legally described Lot 36 in Deposited Plan 25164. The site is located on the southern side of Earl Street, between Mary Street and O’Connors Road.

The site is rectangular with a total area of 579.7 square metres by survey, with an 18.29 metre street frontage to Earl Street. The eastern side boundary measures 31.7 metres and the western side boundary measures 31.7 metres. The rear boundary measures 18.29 metres. The site falls from the street towards the rear by approximately 3 metres.

Prior to the works subject of this Application, the site contained a two storey brick residential dwelling. Unauthorised alterations and additions have been carried to the rear of the dwelling. The rear of the site is landscaped with shrubs and grass. Vehicular access is available from Earl Street.

The land is zoned R2 Low Density Residential under the provisions of Warringah Local Environmental Plan 2011 (LEP). The site is not identified as a Heritage Item, nor is it located within a Heritage Conservation Area (HCA). It is also not considered to be located within the close vicinity of any Item or HCA, or as a contributory item.



**Figure 1:** Site locality Map (Google Map 2022)





**Figure 2:** Aerial photo (NSW Spatial Planning Viewer 2022)



**Figure 3:** Subject site as viewed from Earl Street (Corona Projects 2022)





**Figure 4:** Internal alterations (Corona Projects 2022)



**Figure 5:** Unauthorised stairs and deck (Corona Projects 2022)



## 2.2 The Locality

The site is located within the local residential area of Beacon Hill. The locality predominantly comprises of residential dwellings of varying architectural styles and of heights of typically one to two storeys.

## 2.3 Development History

A search on Council's DA Tracker returned the following results for development applications associated with the site.

- **DA2019/0469:** DA for alterations and additions to a dwelling house including spa. Application has been withdrawn.
- **DA2019/1395:** DA for alterations and additions to a dwelling house. Approved on 30/03/2020.

A Building Information Certificate has also been lodged to accompany this s4.55 Modification Application to seek retrospective approval of all unauthorised works carried out without a Construction Certificate.

## 3.0 PROPOSED MODIFICATION

### 3.1 Planning history and consent to be modified

This application seeks approval to amend the Notice of Determination for Development Application DA2019/1395 at 45 Earl Street, Beacon Hill. The original application was for alterations and additions to a dwelling house. The application was determined with granting of consent on 2 April 2020.

### 3.2 Proposed modifications

The proposal seeks to reduce the scope of the approved plans and to accommodate the unauthorised works carried out to date. More specifically, the proposal includes:

- Deletion of all changes to the basement and first floor (works have not been carried out),
- Deletion of all changes to the garage and the bathroom and laundry attached (works have not been carried out),
- New roof to suit the proposed changes,
- Front extension to form a new indoor area (unauthorised works; retained from previous plan),
- Reconstruction of wall to the southern and western (partial) side of the dwelling,
- Construction of deck and stairs connecting to the rear cabana,
- Construction of spa pool and extension of rear cabana, and
- Relocation of internal staircase.

For further details regarding the nature and extent of these modifications, refer to the plans prepared by Corona Projects.

### 3.3 Consent modifications

The full list of conditions to be amended is set out below

- Condition 1 – Approved Plans– This condition sets out the approved architectural plans. This application seeks to amend this condition by replacing the approved plans with the submitted plans as set out in the following table

Proposed plans to replace the documents under DA2019/1395

Plan Name	Prepared by	Date
Architectural Drawings	Corona Projects	TBA
Plan of Management	TBA	TBA

### 3.4 Numerical Overview

A brief numerical overview of the changes is included in the following table.

Component	Proposal
Site area	579.7m <sup>2</sup>
Gross Floor Area	208.98m <sup>2</sup>
Floor Space Ratio	0.36:1
Height	2 storeys 10.55m
Boundary setbacks	Approximately
Front	As per existing
Side (Western)	1.3m
Side (Eastern)	1.1m
Rear	8.6m
Car spaces	2

## 4.0 STATUTORY PLANNING FRAMEWORK AND ENVIRONMENTAL ASSESSMENT

### 4.1 Section 4.55(2) Modification

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the EP&A Act) addresses modifications to a development consent involving minimal environmental impact and provides that Council may modify consent if:

- (a) 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*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
  - i. the regulations, if the regulations so require, or*
  - ii. a development control plan, if the consent authority is a council that has made a development control plan 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

The above criteria are addressed below.

In the judgement of *Schroders Australia Property Management Pty Ltd v Shoalhaven City Council and Anor* [1999] NSWLEC 251, the Honourable Justice Pearlman defined “substantially the same development” as “essentially or materially or having the same essence”. Accordingly, it is the substance of the proposed modification relative to the substance of the approved development under the original Development Consent that is of relevance in an assessment of Section 4.55. In this regard, the proposed

development, as modified, would essentially and materially have the same essence as that of the originally approved development.

The Honourable Justice Bignold reinstated the above definition in the judgement of *Tipalea Watson Pty Ltd v Ku-Ring-Gai Council* [2003] NSWLEC 253. The Honourable Justice stated that “substantially the same development” meant “essential characteristics”. The minor nature of the proposal does not change the existing and approved residential use. The proposal seeks to reduce the scope of the approved DA, which will still be substantially the same as the original proposal.

Notification of this application is a matter for Council. Should Council notify the application and receive any submissions the applicant requests the opportunity to provide a response to any issues raised, prior to the application being determined.

As established above. The proposed modification satisfies the criteria pursuant to Section 4.55 of the EP&A Act.

## **4.2 Section 4.15 Assessment**

Section 4.55 (3) of the Act requires that, *"[i]n determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.55 (1) as are of relevance to the development the subject of the application."*

The relevant environmental planning instruments for consideration under Section 4.15(a) of the EP&A Act, 1979, are identified as:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- Warringah Local Environmental Plan 2011
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The applicable policy control documents are:

- Warringah Development Control Plan 2011

### **4.2.1 State Environmental Planning Policy (Resilience and Hazards) 2021**

This Policy is to provide for a state-wide planning approach to the remediation of contaminated land. Subject to Clause 7, considerations should be given to the suitability of land in terms of contamination.



The subject site has a long history of being used for the residential purpose. Thus, there is no further consideration required under Clause 7(1)(b) and (c) of SEPP 55.

#### **4.2.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

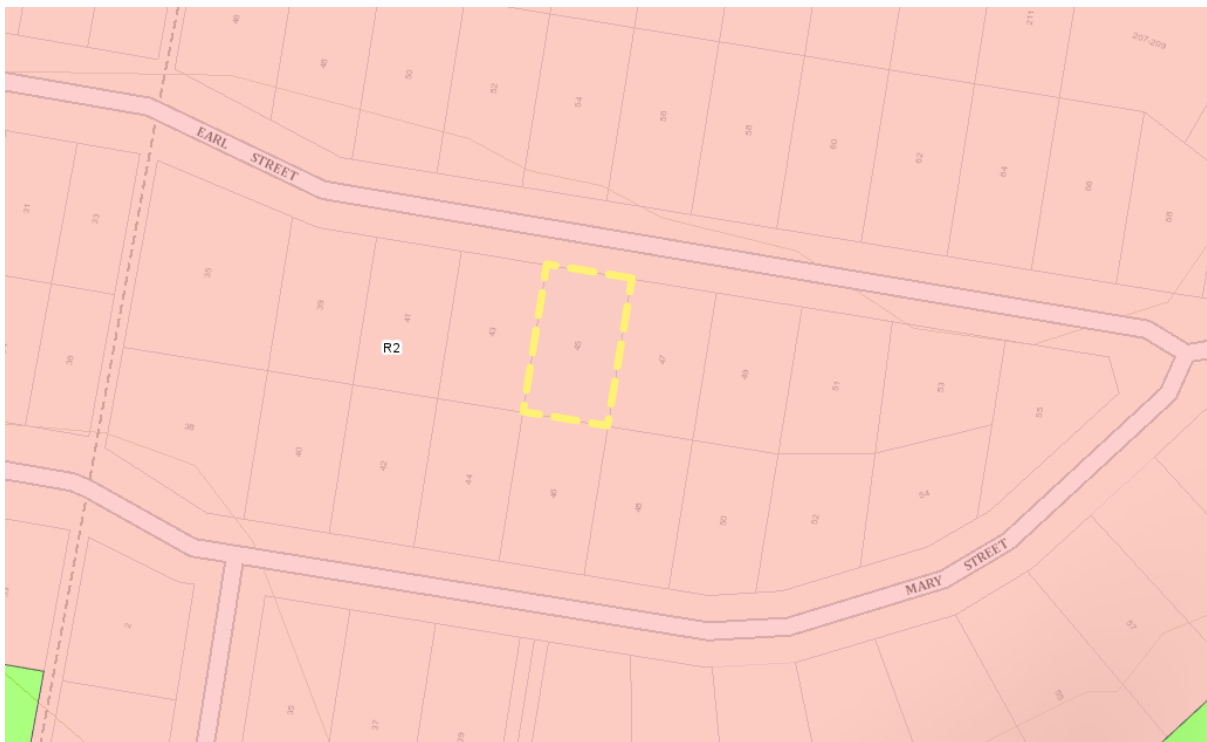
SEPP (BASIX) 2004 applies to the proposed development. A BASIX Certificate is submitted with the application and confirms that the proposal will comply with the water, thermal comfort and energy efficiency requirements of the policy.

#### **4.2.3 Warringah Local Environmental Plan 2011**

The development complies with the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011).

#### **Zoning and permissibility**

The site is located in Zone R2 Low Density Residential.



**Figure 6:** Land Zoning Map (NSW Spatial Planning Viewer 2022)

The development is identified to be *alterations and additions to dwelling house*, which is permitted with consent in the R2 Low Density Residential zone.

The objectives of the zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

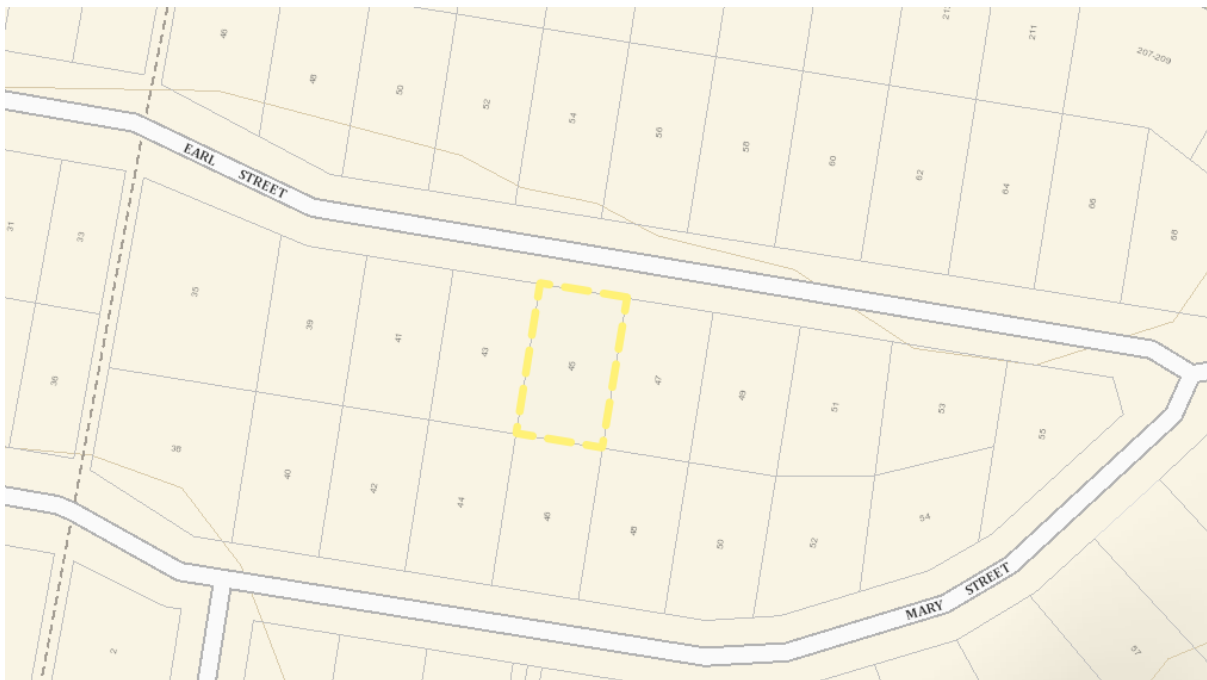
The proposed development will provide a newly renovated dwelling in addition to the approved alterations under DA2019/1395. The unauthorised works are not seen to have any impact on the presentation of the dwelling and do not impact the use of the site as a single dwelling house.

### **Clause 4.3 Height of buildings**

The Height of Building Map stipulates that the maximum building height permitted for the site is 8.5 metres. The existing dwelling height is 10.55m however no change to the established height is proposed. The tallest point of the unauthorised works reach a height of 5m and are located underneath the current ridgeline.

### **Clause 5.10 Heritage Conservation**

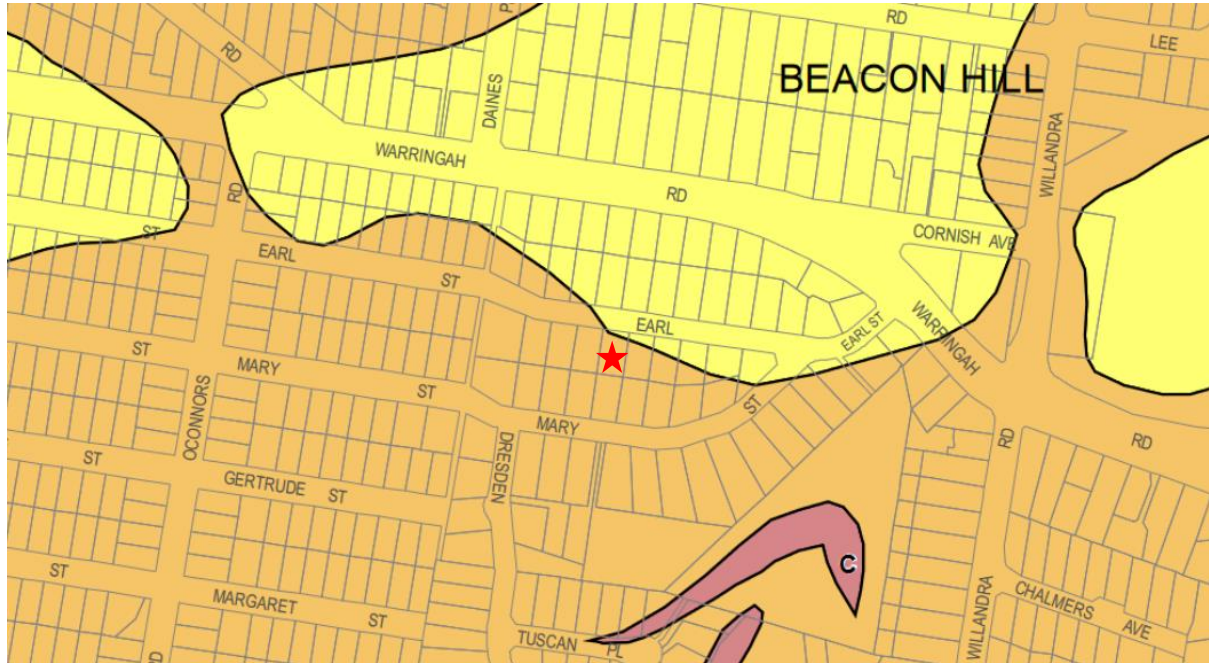
The site is not identified as a Heritage Item, nor is it located within a Heritage Conservation Area (HCA). It is also not considered to be located within the close vicinity of any Item or HCA, or as a contributory item.



**Figure 7:** Heritage Map (NSW Spatial Planning Viewer 2022)

### Clause 6.4 Development on Sloping Land

The Landslip Risk Map stipulates that the site falls under Area A (Slope <5) and Area B (Franking slopes between 5 and 25). Most part of the site is located within Area B. The unauthorised works have been carried out in accordance with the engineers drawings and thus no further consideration is required.



**Figure 8:** Landslip Risk Map (NSW Planning Portal 2022)

### 4.2.4 Warringah Development Control Plan 2011

The development achieves a high level of compliance with the provisions of Warringah Development Control Plan 2011.

Control	Comment	Compliance	
Part B Built Form Controls			
B1 Wall Heights			
1	Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).	The proposal does not exceed the 7.2m wall height control.	Complies
B2 Number of Storeys			
1	Buildings on land shown coloured on the DCP Map Number of Storeys must comply with the maximum number of storeys	The DCP map does not stipulate the maximum number of storeys for buildings on the subject property.	N/A

Control		Comment	Compliance
	identified on the DCP Map Number of Storeys.		
<b>B3 Side Boundary Envelope</b>			
1	Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of: <b>4m</b>	The existing dwelling exceeds the side boundary envelope; however, the unauthorised works subject of this application do not encroach upon this side building envelope.  Please refer to the architectural plans for more details.	Acceptable on merit
<b>B4 Site Coverage</b>			
1	Development on land shown coloured on the DCP Map Site Coverage shall not exceed the maximum site coverage shown on the map.	No maximum site coverage control is applicable to the site.	N/A
<b>B5 Side boundary setbacks</b>			
1	Side setback: 0.9m	The current western and eastern side setback is 1.3m and 1.1m respectively. No change is proposed.	Complies
<b>B7 Front boundary setback</b>			
1	Front setback: 6.5m	The proposal does not impact the front setback.	Complies
2	The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.	No change is proposed to the front setback. The original basement, garage and first floor extension will be deleted from the plan.	Complies
<b>B9 Rear boundary setback</b>			
1	Rear setback: 6m	The proposed rear setback from the house is 8.6m.	Complies



Control		Comment	Compliance
		It is noted that the rear cabana is unable to achieve a compliant rear setback, however it provides a compliant 900mm setback from the boundaries. This follows the existing pattern of having outbuildings located within close proximity of side boundary while maintaining an acceptable distance and compliance with BCA.	Acceptable on merit
2	The rear setback area is to be landscaped and free of any above or below ground structures.	The existing rear setback area is generally landscaped and free of structures.	Complies

**C3 Parking Facilities**

1	<p>The following design principles shall be met:</p> <ul style="list-style-type: none"> <li>• Garage doors and carports are to be integrated into the house design and to not dominate the façade. Parking is to be located within buildings or on site.;</li> <li>• Laneways are to be used to provide rear access to carparking areas where possible;</li> <li>• Carparking is to be provided partly or fully underground for apartment buildings and other large scale developments;</li> <li>• Parking is to be located so that views of the street from front windows are not obscured; and</li> <li>• Where garages and carports face the street, ensure that the garage or carport opening does not exceed 6 metres or 50% of the building width, whichever is the lesser.</li> </ul>	No change is proposed to the existing garage.	Complies
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Control		Comment	Compliance
4	Car parking rate:  2 spaces per dwelling, except for land known as Belrose Corridor (see Part G4) which has a maximum of 2 car spaces.	The existing double carport has been retained. No change is proposed to the garage.	Complies

**C4 Stormwater**

	Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.  The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.	Appropriate stormwater management system will be installed onsite.	Complies
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**D1 Landscaped Open Space and Bushland Setting**

1	The required minimum area of landscaped open space is shown on DCP Map Landscaped Open Space and Bushland Setting: <b>40%</b>	The proposal delivers a compliant provision of 250.33sqm (43.18%) of landscaped area.	Complies
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**D2 Private Open Space**

1	Residential development is to include private open space for each dwelling.	POS is located behind the dwelling.	Complies
2	Minimum area and dimensions of private open space for dwelling houses and attached dwellings with 3 or more bedrooms:  A total of 60m <sup>2</sup> with minimum dimensions of 5 metres	The existing POS measures at least 72sqm in size with the minimum dimension of 8m.	Complies
3	Private open space is to be directly accessible from a living area of a dwelling and be capable of serving as an extension	The existing POS is directly accessible from the ground floor	Complies

Control		Comment	Compliance
	of the dwelling for relaxation, dining, entertainment, recreation and children's play.	kitchen and living area via the rear deck and stairs.	
4	Private open space is to be located and designed to ensure privacy of the occupants of adjacent buildings and occupants of the proposed development.	The private open space is located on ground level in its existing location. It is not foreseen to bring any unwarranted privacy impacts to the adjoining properties.	Complies
5	Private open space shall not be located in the primary front building setback.	The private open space is located behind the dwelling.	Complies
6	Private open space is to be located to maximise solar access.	The POS is carefully placed to maximise solar access to the area.	Complies

**D11 Roofs**

2	Roofs should complement the roof pitch and forms of the existing buildings in the streetscape.	The unauthorised roof was constructed to complement the existing dwelling and to accommodate the unauthorised extension. A BIC application has been lodged to regularise the unauthorised works.	Complies
4	Roofs shall incorporate eaves for shading.	The new roof incorporates eaves for shading.	Complies

**D16 Swimming pools and spa pools**

1	Pools are not to be located in the front building setback.	The unauthorised spa pool is located in the rear setback. A BIC application has been lodged to regularise the unauthorised works.	Complies
3	Swimming pools and spas are to be setback from any trees. Australian Standard AS4970-2009 Protection of trees on development sites is to be used to determine an appropriate setback.	The unauthorised spa pool is located in the approved location as per the previous DA. A BIC application has been lodged to regularise the unauthorised works.	Complies

## 4.2 Impacts of the Development

As noted in the above assessment against the provisions of the relevant Environmental Planning Instruments and Development Control Plan, the development is of a reasonable scale and nature, and does not present unreasonable environmental, social and economic impacts.

### Impacts on Natural and Built Environment

The unauthorised works subject to this BIC application are considered to be acceptable as they do not unreasonably change the presentation of the dwelling to the street. The proposed works are predominately located behind the front building line, save for the enclosure of verandah in front of the house. Most of the works have been approved under DA2019/1395, they are considered as unauthorised works as no construction certificate was obtained prior to commencement of the works.

The unauthorised works generally comply with other planning controls, including minimum setbacks, landscaping, and height controls. The replacement of wall to the northern and western side of ground floor was carried out as the original wall had fallen into disrepair and required replacement. The remaining works are considered minor in nature and they are all located on ground floor.

The unauthorised works do not impact upon native vegetation, soil conditions, foreshore environment or air quality. The works do not change the current residential use of the site and do not introduce any incompatible structure to the locality.

### Social and Economic Impacts

The development increases the amenity of the property with the minor alterations and additions. The development will thus also upgrade the presentation of the site to the street and improve aesthetic quality of the streetscape. The proposal does not engender any negative social or economic outputs.

## 4.3 Suitability of the Site

The subject site is considered suitable in size and shape to accommodate the alterations and additions to dwelling house. The proposal does not introduce any incompatible uses to the site. The works are permissible under the R2 Low Density Residential zone.



#### **4.3.1 Access to Services**

The site is located within an established residential area with excellent access to services and public transport. As the site is within an established urban area, electricity, sewer, telephone, and water services are readily available to the subject site.

#### **4.3.2 Parking and Access**

The on-site parking provided complies with the parking requirements as prescribed by Warringah Development Control Plan 2011. It provides a logical and considered approach to the provision of off-street car parking.

#### **4.3.3 Hazards**

The site is in an area recognised by Council as being subject to landslide. The proposed development is not likely to increase the likelihood of such hazards occurring and is considered appropriate in this instance.

### **4.4 The Public Interest**

The proposal is considered to be in the public interest as it produces nominal negative environmental, social and economic impacts.

The proposed development has been designed to relate to the size, shape and context of the site and has been designed in accordance with the desired future character for development in the area.

## **5.0 CONCLUSION**

The Statement of Environmental Effects (SEE) has been prepared to consider the environmental, social and economic impacts of the alterations and additions to an existing dwelling at 45 Earl Street, Beacon Hill. The report has addressed the applicable policies and plans, and has provided an environmental assessment in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

The application proposes a permissible development within the subject site locality. The proposal incorporates appropriate design considerations to minimise any adverse impacts on the natural and built environment, and the amenity of the surrounding neighbourhood.

Given the benefits of the development and compliance with the relevant policies and plans, we conclude that the proposed development at 45 Earl Street, Beacon Hill as described in this application is reasonable and supportable, and worthy of approval by Northern Beaches Council.