

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0076
----------------------------	--------------

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 16 DP 23317, 10 Naree Road FRENCHS FOREST NSW 2086
Proposed Development:	Modification of Development Consent DA2018/0849 granted for Demolition works and construction of a Boarding House development
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:	Cobrum Pty Ltd
Applicant:	Cobrum Pty Ltd

Application Lodged:	28/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	13/04/2022 to 04/05/2022
Advertised:	13/04/2022
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

All proposed modifications have been outlined on the modified architectural plans Revision 1 dated 25.1.2022 and a schedule of amendments prepared by *BKA Architecture* as reproduced below:

List of Amendments:

- 01 - Bathroom layout and location amended, kitchen layout and location amended, wardrobes relocated within the same unit layout (selected units).
- 02 - Bathroom location amended, kitchen location amended, wardrobes relocated within the same unit layout (selected units).
- 03 - Sliding door added behind screens (ground level)
- 04 - Louvre windows replaced with fixed panel windows (side alcove / recess).
- 05 - Height of window behind screen increased (rear windows).

- 06 - Wardrobe and kitchen location swapped.
- 07 - Plant area (centre of roof mid section, additional to basement plant room).
- 08 - Area to be used for solar panels (rear roof section).
- 09 - Room area increased because of proposed slimmer wall system.
- 10 - Room area reduced because of lift shaft wall thickness increased.

It is proposed to modify Condition No. 2 of the development consent by reference to the amended architectural plan set.

(Note: the plan date is in reverse [American] format)

- No change to finished floor levels or roof levels as approved by the NSW Land and Environment Court.

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

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

<p>Property Description:</p>	<p>Lot 16 DP 23317 , 10 Naree Road FRENCHS FOREST NSW 2086</p>
<p>Detailed Site Description:</p>	<p>The site is located on the northern side of Naree Road, within 140 metres of Frenchs Forest shopping centre. The site has an area of 975.5 square metres (sqm) with a width of 21.3 metres (m) and a depth of 45.7m. The land has a moderate slope toward the rear with a fall of 4.0m. Naree Road has been subject to significant road works in association with the Northern Beaches Hospital and for local traffic management. Traffic light signals are located at the intersection of Forest Way and Naree Road and a bus stop is situated 25m East of the site.</p> <p>The site currently contains a single storey detached dwelling house, shed and carport, with some medium to small trees and shrubs within the surrounding garden areas of the property.</p> <p>The site is not within a bushfire prone area or subject to flooding and is within "Area B" for landslip classification under the Warringah Development Control Plan 2011 ("DCP 2011"). There are no significant natural rock outcrops or threatened species habitat and the proposal does not contain (or adjacent too) any heritage items</p> <p>The site is located within the local area subject to the <i>Northern Beaches Hospital Precinct Structure Plan (HPSP)</i>. Under the HPSP the site is within a proposed R3 Medium Density zone for a future 11m / 3 storey height control and 1.3:1 floor space ratio. This document is not a statutory planning document.</p> <p>Surrounding development to the east, north and south is dominated by single storey detached dwelling houses within landscaped settings. While there are numerous single storey buildings in the vicinity, the residential character of development visible from the site is characterised by low density detached dwellings that are mostly two-storey.</p> <p>To the south-west of the site is a church and a mix of commercial land uses, including Frenchs Forest Shopping Centre. Development to the East is comprised of low density detached housing with the Forest High School and Northern Beaches Hospital within 700m of the site. To the immediate North and South of the site is low density detached housing.</p> <p>The subject site is located within Phase 2 of the <i>Hospital Precinct Structure Plan (HPSP)</i> which envisions an area of medium density residential zoning to accommodate additional dwellings that will support the role of the Frenchs Forest Town Centre.</p>

Map:



SITE HISTORY

Development Application No.2005/0764 for alterations and additions to a dwelling house was approved by Council on 17 September 2005.

Building Application No.BA5002/9910 for alterations and additions was approved by Council in 1995.

The proposed Boarding House involves the complete demolition and removal of all building structures on the site and therefore no further issues are raised with regard to previous development on the land.

Development Application No.DA2018/0849 for demolition and construction of a boarding house with basement carparking was refused by Council on 7 August 2019. The determination by Council was subject to Appeal in the NSW Land and Environment Court (LEC) under proceedings No.2018/332566. An amended proposal was subsequently approved by the NSW LEC after the Hearing by way of deferred commencement on 11.3.2020. The deferred commencement requirements (easement to drain stormwater) were satisfied on 31.3.2022, by notice to the applicant.

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 NSW LEC judgement and proceedings associated with DA2018/0845 as approved by the NSW LEC, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
<p>(1) 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:</p>	
<p>(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</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 DA2018/0845 for the following reasons:</p> <ul style="list-style-type: none"> • The proposed amendments relate only to a minor part the buildings and minor changes to address BCA / Australian Standards requirements or minor cosmetic elements, or internal refinements to room layouts. • The building compliance with the <i>SEPP Housing</i> and landscape planting regime remain principally the same (no additional tree removal). • No changes to the floor / roof levels are proposed with no increased impacts on surrounding land .by overshadowing / privacy. • Landscaping area remains consistent with the approved plans (as previously modified). • There is no impact on the public domain, or the streetscape. • Site works for construction of the boarding house have not yet commenced.
<p>(b) 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</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>

Section 4.56- Other Modifications	Comments
modification of a development consent, and	
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2018/0845 (and in association with the Court hearing proceedings, as relevant to the modification works and Community Participation Plan).
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.56 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 as modified retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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.

Section 4.15 'Matters for Consideration'	Comments
	<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.</p> <p><u>Clause 98</u> of the EP&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&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>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>	<p>(i) 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 and heading <i>SEPP Housing</i>.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p> <ul style="list-style-type: none"> • The modification does not change the approved use of the boarding house and its major components of rooms occupancy, parking, landscaping, height and scale and other main ancillary features that would create any unreasonable impact on surrounding land. • No significant change to landscaping area, setbacks, materials, wall height, envelope, neighbours amenity or other building design controls is proposed. Stormwater has been addressed previously by Deferred commencement to the satisfaction of Council Development Engineers. No change to stormwater conditions is required. • A modification may be limited to address 'contingencies' that arise during construction and act in retrospect

Section 4.15 'Matters for Consideration'	Comments
	<p>pursuant to Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240 and subsequent judgement consideration and potential limitations made in Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177 (“Buyozo”).</p> <ul style="list-style-type: none"> • The NSW Planning Directions to local Councils (Variation to Development Standards) has been reviewed with respect to permitting variations for development applications and the use of Planning Panels / or alternative Panel / staff delegations for such purposes of a modification. The approval of the proposed modification is consistent with current submission threshold of 5 submissions. • Consideration of the modification has been made in context as summarised by Pepper J in Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3) [2015] NSWLEC 75. • No change is proposed to vary (breach) any SEPP development standard associated with the modification works (noting that the SEPP standards override the LEP / DCP).
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	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest including reasons given for approval (as per S4.55(3)) and in consideration of the original application by the NSW LEC as detailed in the Court judgement which has been reviewed / considered as part of this modification assessment.</p> <p>The original DA file, documents and submissions have been reviewed in context of the modification plans and the proposal remains consistent with the approved plans and conditions.</p>

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 13/04/2022 to 04/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Jonathan Joseph Gormley	23 Wareham Crescent FRENCHS FOREST NSW 2086
Robert Brennan	Suite 71 14 Narabang Way BELROSE NSW 2085

The following issues were raised in the submissions:

1. Privacy
2. Roof plant and solar panels
3. Stormwater
4. BCA compliance

The above issues are addressed as follows:

- *1. Concern with privacy impact to the rear for No.23 Wareham Crescent with window and door opening changes and changes along the side elevation to No.8 Naree Road.*

Comment:

This issue is considered under the heading *Part D8 Privacy* within this report and remains consistent with the LEC approved plans. In summary a landscape buffer is provided to the rear, an operational management plan, screens and high rear fencing to maintain residential privacy. This issue does not warrant additional conditions or refusal of the modification.

- *2. Concern with new roof plant and solar cells being positioned on the roof.*

Comment

This issue is considered in terms of the noise assessment by Council Environmental Health section and the visual assessment of the proposal, including external appearance. The roof level is well above the height of No.23 Wareham Crescent and No.8 Naree Road and will not create unreasonable amenity impacts by the solar cells or A/C units. Overall the proposal remains consistent with the LEC approved conditions. A landscape buffer is provided to the rear and there are existing trees along the boundary area that assist to maintain residential privacy. This issue does not warrant additional conditions or refusal of the modification.

- *3. Concern that the stormwater drainage direction has changed for the purpose easements and connections.*

Comment:

The deferred commencement condition for stormwater connection and an easement is no longer required through No.23 Wareham Crescent as the drainage is now directed to the east and has been addressed to the satisfaction of Council's Development Engineers. This issue is not relevant to the modification work for the building.

- *4. Concern that the modification relies on Building Code of Australia performance solutions, including fire stair, hydrant, egress paths, booster and accessibility requirements.*

Comment:

The proposed modifications have been considered by Council's Health and Building team for fire

and disability requirements. No objection to approval has been made and existing conditions of consent will ensure compliance measures are satisfied prior to Construction Certificate (CC). This issue does not warrant refusal of the modification as the purpose of the CC process is to address BCA matters as per conditions of consent.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported with no modified / additional conditions.</p> <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>
Environmental Health (Industrial)	<p>Supported with modified / additional conditions.</p> <p><u>General Comments</u></p> <p>Proposed modifications show that mechanical (air conditioning) plant will be situated in the central rooftop area. The application mentions that Condition 19 of Appeal No 18/332566 (DA2018/0849) requires the acoustic treatment of mechanical plant prior to the Construction Certificate being issued. It is imperative that the intention of this condition - "that mechanical plant be inaudible to residents during 'night time' period (referring to <i>Noise Policy for Industry 2017</i> terminology)" be preserved when in operation. We therefore recommend that an operational condition be implemented to reflect the guideline and Council's <i>DCP Clause D3</i>.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to <i>Ausgrid</i> . A response has been received on 5.5.2022 with standard requirements to be complied with for safety clearances and Ausgrid assets for the modification of consent.

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

The requirements and considerations of the SEPP were addressed with the original development application. The modification does not raise any further issues that are inconsistent with / or already addressed by the existing conditions for site conditions, pursuant to the SEPP. No further detailed consideration is required.

SEPP (Building Sustainability Index: BASIX) 2004

The proposal is subject to SEPP Basix following the NSW LEC decision that a Boarding House may be considered as dwelling style housing relevant to SEPP Basix. A Basix report has been submitted for the modification work No.1025335M-04 dated 7 March 2022.

The proposal addressed Part J of the *Building Code of Australia* to demonstrate energy efficiency as per the original application approved by the NSW LEC. Modified conditions are included to reference the new Basix report.

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 modification proposal was referred to *Ausgrid*. A response has been received on 5.5.2022 with standard requirements to be complied with for safety clearances and Ausgrid assets for the modification of consent.

Other Service Infrastructure Authorities

The modification application was not required to be referred to the *Roads and Maritime Service (RMS)* as the works are generally BCA related for selected windows, A/C units and the like. No change to the works at Naree Road or the intersection or footpath are proposed by the modification. SEPP Infrastructure requirements were considered under the original application as approved by the NSW LEC. No other service authority referral issues are raised pursuant to the SEPP. *Sydney Water* requirements are addressed by separate processes administered directly by Sydney Water for sewer

and water supply connections.

SEPP (Housing) 2021

Part 3 – Co-Living Housing

This section of the SEPP was previously covered by SEPP Affordable Rental Housing for boarding houses. The new SEPP Housing has consolidated a number of SEPP's and associated provisions. Boarding houses were previously permissible on the site pursuant to Warringah LEP 2011 at the time of approval and remain so. Affordable Rental Housing for a boarding house is termed "co-living" for the type of development approved in this case.

Clause 67 – Co-living housing may be carried out on certain land with consent	
Standard	Compliance/Comment
Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing, residential flat buildings or shop top housing is permitted under another environmental planning instrument.	The proposal was approved as a permissible use and changes to place limits of 12 rooms only for boarding houses in R2 zoned areas did not apply to the approved development at the time of lodgement, (and subject to transitional savings under the SEPP ARH)

Clause 68 – Non-Discretionary Development Standards	
Standard	Compliance/Comment
Floor Space Ratio	
a) For development in a zone in which residential flat buildings are permitted - a floor space ratio not more than: <ul style="list-style-type: none"> i) the maximum permissible floor space ratio for residential accommodation on the land, and ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing. 	No change to FSR proposed.
Communal Area(s)	
b) For co-living housing containing 6 private rooms: <ul style="list-style-type: none"> i) a total of at least 30m² of communal living area, and ii) minimum dimensions of 3m for each communal living area. 	No applicable
c) For co-living housing containing more than 6 private rooms: <ul style="list-style-type: none"> i) a total of at least 30m² of communal living area plus at least a further 2m² for each private room in excess of 6 private rooms, and ii) minimum dimensions of 3m for each communal living area. 	No change to communal living net areas and dimensions proposed.

<p>d) communal open spaces:</p> <ul style="list-style-type: none"> i) with a total area of at least 20% of the ii) site area, and each with minimum dimensions of 3m. 	<p>No change to the approved scheme for communal open space. (changes are essentially to internal and minor elements of the building fabric)</p>
Car Parking	
<p>e) Unless a relevant planning instrument specifies a lower number:</p> <ul style="list-style-type: none"> i) for development on land in an accessible ii) area - 0.2 parking spaces for each private room, or otherwise - 0.5 parking space for each private room. 	<p>No change to carparking.</p>
Landscaping	
<p>f) For development on land in R2 Low Density Residential or R3 Medium Density Residential - the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument.</p>	<p>Consistent with LEC approved plans</p>
<p>g) For development on land in R4 High Density Residential - the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.</p>	<p>Not applicable</p>

Clause 69 – Standards for Co-Living Housing	
Standard	Compliance/Comment
<p>1) A consent authority must not consent to development to which this Part applies unless it is satisfied that:</p>	
<p>a) Each private room has a floor area, (excluding an area used for the purposes of private kitchen or bathroom facilities), that is not more than 25m² and not less than:</p> <ul style="list-style-type: none"> i) for a private room intended to be used by ii) a single occupant - 12m², or otherwise - 16m². 	<p>Adjustment to kitchen areas and lodger rooms remains consistent with the approved plans. Minor design layout changes maintain consistent areas.</p>
<p>b) The minimum lot size for the co-living housing is not less than:</p> <ul style="list-style-type: none"> i) for development on land in R2 Low Density Residential – the lesser of the ii) minimum lot size requirements for manor houses under a relevant planning iii) instrument, or 600m², for development on land in R3 Medium Density Residential – the minimum lot size requirements for multi dwelling housing under a relevant planning instrument, for development on other land - the minimum lot size requirements for residential flat buildings under a relevant 	<p>No change. Consistent with original approval.</p>

planning instrument.	
c) For development on land in Zone R2 Low Density Residential or an equivalent land use zone, the co-living housing: <ul style="list-style-type: none"> i) will not contain more than 12 private ii) rooms, and will be in an accessible area.	The proposal was approved as a permissible use and changes to place limits of 12 rooms only for boarding houses in R2 zoned areas did not apply to the approved development at the time of lodgement, (and subject to transitional savings under the SEPP ARH)
d) The co-living housing will contain an appropriate workspace for the manager, either within the communal living room area or in a separate space.	Consistent - desk spaces shown.
e) For co-living housing on land in a business zone – no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use.	Not applicable.
f) Adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant.	Site facilities for laundry, cooking and waste and storage remain consistent.
g) Each private room will be used by no more than 2 occupants.	Complies.
2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether:	
a) the front, side and rear setbacks for the co-living housing are not less than: <ul style="list-style-type: none"> i) for development on land in R2 Low Density Residential or R3 Medium Density Residential - the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or ii) for development on land in R4 High Density Residential - the minimum setback requirements for residential flat buildings under a relevant planning instrument. 	No change to reduce setbacks is proposed. Setbacks remain consistent with the approved scheme.
b) if the co-living housing has at least 3 storeys - the building will comply with the minimum building separation distances specified in Clauses 2F & 3F of the Apartment Design Guide (ADG).	Complies. (Surrounding land contains low density residential use with no apartment development)
c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area.	Complies
d) at least 1 bicycle parking space will be provided for each private room.	Complies
e) at least 1 motorcycle parking space will be provided for every 5 private rooms.	Complies
f) the design of the building will be compatible	General appearance of the building remains

with: i) the desirable elements of the character of the local area, or ii) for precincts undergoing transition - the desired future character of the precinct.	consistent with the LEC approved plans and conditions of consent.
--	---

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

Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	8.32*m	No change	Yes

*Height assessed from the submitted Survey plan and finished RLs shown on the architectural modification plans.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	7.99m	No change	No* As approved
B3 Side Boundary Envelope	45 degrees at 4m (East)	Breach of envelope	No change	No* As approved
	45 degrees at 4m (West)	Within envelope	No change	Yes

B5 Side Boundary Setbacks	0.9m (East)	0.0m (Basement) 2.0m to 3.0m (Ground floor - primary wall plane) 3.0m (First floor - primary wall plane) 3.0m (Second floor - primary wall plane)	No change No change No change No change	No* As approved Yes Yes Yes
	0.9m (West)	0.0m (Basement) 0.0m to 4.0m (Ground floor - primary wall plane) 3.0m - 4.0m (First floor - primary wall plane) 4.0m (Second floor - primary wall plane)	No change No change No change No change	No* As approved No* As approved Yes Yes
B7 Front Boundary Setbacks	6.5m	0.9m (Basement) 6.5m (Primary wall plane)	No change No change	No* As approved Yes
B9 Rear Boundary Setbacks	6.0m	5.8m (Basement) 6.0m (Primary wall plane)	No change No change	No* As approved Yes
D1 Landscaped Open Space (LOS) and Bushland Setting (Area 975.5sqm) 77.1 +21.8+10.3	390sqm 40%	120.2m (12.3%)	No change	No* As approved

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	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	No	No
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The objectives and requirements of *Part B1 Wall Height* were considered during the NSW LEC appeal proceedings. No change is proposed to the wall height and the modification therefore remains consistent with the approved scheme and is substantially the same. No further detailed assessment is required for the modification.

B3 Side Boundary Envelope

The objectives and requirements of *Part B3 Side Boundary Envelope* were considered during the NSW LEC appeal proceedings. No change is proposed to the side boundary envelope and the modification therefore remains consistent with the approved scheme and is substantially the same. No further detailed assessment is required for the modification.

B9 Rear Boundary Setbacks

The objectives and requirements of *Part B9 Rear Boundary Setback* were considered during the NSW LEC appeal proceedings. No change is proposed to the rear boundary setback and the modification therefore remains consistent with the approved scheme and is substantially the same. No further detailed assessment is required for the modification. The redirection of the stormwater drainage to the east does not have any adverse impact on the rear setback area, deep soil and private open space.

C4 Stormwater

The objectives and requirements of *Part C4 Stormwater* were considered during the NSW LEC appeal proceedings. The Deferred Commencement requirements in the Conditions of Consent were previously assessed by Council's Development Engineers and have been satisfied. The modification remains consistent with the approved scheme. No further detailed stormwater assessment is required for the modification.

D1 Landscaped Open Space and Bushland Setting

The objectives and requirements of *Part D1 Landscape Open Space and Bushland Setting* were considered during the NSW LEC appeal proceedings. No change is proposed to the landscape open space and the modification therefore remains consistent with the approved scheme and is substantially the same. No further detailed assessment is required for the modification.

D2 Private Open Space

Description of non-compliance

Communal private open space is located within the rear 6.0m setback of the site. (The numerical compliance with SEPP Housing overrides the DCP, however non-numerical DCP design objectives / desired outcomes are still required to be considered.)

Merit consideration

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

- *To ensure that all residential development is provided with functional, well located areas of private open space.*

Comment:

The communal outdoor private open space is located at the rear of the site and was provided with additional shielding by amended plans / condition via the NSW LEC assessment considerations. Additionally the landscape buffer from adjacent land remain substantially the same and provide adequate privacy for the lower ground floor. It is considered that the

private open space area is not well located / adequately buffered to minimise noise intrusion to neighbours, including potential overlooking of an adjacent swimming pool. The changes to the ground floor and upper storey side and rear windows and screens do not unreasonably affect privacy protection to adjacent land.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment:

The communal private open space for the boarding house is directly accessible from the communal living room and located at ground floor level at the rear of the building. Therefore, the modified proposal satisfies this objective.

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment:

The private open space area is wholly within the rear setback area. The paved terrace is likely to be used quite frequently and by multiple lodgers. A 3m to 6.0m landscaped buffer was provided toward No.21 to No.25 Wareham Crescent, and dividing timber paling fence. Residential noise from persons socializing within the boarding house rear terrace area being likely to be readily apparent from adjacent properties to north and a operational management plan for the boarding house forms part of the approval to address this issue.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment:

The communal private open space area at the rear of the site receives sufficient solar access to comply with the WDCP on the 21 June, as demonstrated in the solar access diagrams prepared by *BKA Architecture* dated, 20.8.2009 approved by the NSW LEC.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the modified proposal is consistent with the scheme approved by the NSW LEC and is supported, in this particular circumstance.

D8 Privacy

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed modification maintain the location of ground floor private open space within the side setback areas as approved by the NSW LEC. Boundary setbacks and landscape buffers for the front, side setbacks and rear setback remain consistent with the Court approved plans and conditions of consent. The modification includes some minor changes to maintain screening, natural light and amenity for selected rooms along the side and rear elevations. Upper levels are provided with planter boxes / screens on side recesses and opaque glass to maintain privacy. Therefore, the proposal is consistent with this objective.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The design of the building includes high sill windows and use of opaque glass and fixed screening devices to maintain privacy along the side boundaries for the upper two levels and high fencing at ground floor level. The proposed modification work is consistent with the NSW LEC approved plans and conditions to maintain visual and acoustic privacy to neighbours with no unreasonable privacy impact from outlook.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal has only the driveway (basement) and front entry area that are the principal access to the building. Therefore, privacy access is restricted for the security of occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed modification of development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the modified proposal is supported, in this particular circumstance.

D9 Building Bulk

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows and pursuant to the judgement of the NSW LEC in terms of consistency with the approved scheme:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal was subject to amended design in terms of its architectural form during the NSW LEC proceeding and the modification proposed to the approved scheme is consistent with the Court judgement. The building bulk is consistent with approved design, height, scale and width. The modification works including positioning of some A/C plant on the roof and solar cells does not create an adverse impact on the approved building design and bulk.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The building bulk is consistent with approved design, shape and general appearance. The modification works including positioning of some selected window and screen changes, plus the location of some A/C plant on the roof and solar cells does not create an adverse impact on the approved visual impact.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the modified proposal is supported, in this particular circumstance.

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 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP

- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0076 for Modification of Development Consent DA2018/0849 granted for Demolition works and construction of a Boarding House development on land at Lot 16 DP 23317, 10 Naree Road, FRENCHS FOREST, subject to the conditions printed below:

A. Add Condition No.2A - Modification of Consent - Approved Plans and supporting Documentation, to read as follows:

"2A - Modification of Consent - Approved Plans and supporting Documentation

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
S4.56 rev 1 Lower Ground Plan	25.1.2022	BKA Architecture
S4.56 rev 1 Ground Floor Plan	25.1.2022	BKA Architecture
S4.56 rev 1 Level 1 Plan	25.1.2022	BKA Architecture
S4.56 rev 1 Roof Plan	25.1.2022	BKA Architecture
S4.56 rev 1 North Elevation	25.1.2022	BKA Architecture

*Note date format is shown in reverse on the drawings.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate 1025335M_04	7.3.2022	EPS

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

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

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

B. Add Condition No.2A Compliance with Other Department, Authority or Service Requirements, to read as follows:

"2A. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	5.5.2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies."

C. Add Condition No.49. Noise from Mechanical Plant, to read as follows:

" 49. Noise from Mechanical Plant

Noise from mechanical plant must be in accordance with the following points:

- i) between 7am to 6 pm, must not be more than 5dB(A) above ambient background noise when measured at the receiving boundary of residential and other noise sensitive land uses;
- ii) between 6 pm and 10 pm, must not be more than 3dB(A) above ambient background noise when measured at the receiving boundary of residential and other noise sensitive land uses; and
- iii) between 10 pm and 7 am, must not be audible when measured within any habitable residential room or other noise sensitive land uses.

Reason: Compliance with appropriate noise criteria based on *Noise Policy for Industry 2017* and *Warringah Development Control Plan*."

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

Signed



Alex Keller, Principal Planner

The application is determined on 14/07/2022, under the delegated authority of:





Phil Lane, Acting Development Assessment Manager