

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0173
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 1 DP 900658, 7 Pavilion Street QUEENSCLIFF NSW 2096
Proposed Development:	Modification of Development Consent DA2018/0612 granted for alterations and additions to 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:	Yes
Owner:	James David O'Leary Megan Oi Qwan Chan O'Leary
Applicant:	Corben Architects

Application lodged:	17/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/04/2019 to 14/05/2019
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B13 Coastal Cliffs setback
 Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 1 DP 900658 , 7 Pavilion Street QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north eastern side of Pavilion street.</p> <p>The site is irregular in shape with an angled frontage of 17.33m along Pavilion street and a depth of 43.18m along the northern boundary and 50.54 along the southern boundary. The site has a surveyed area of 910.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site falls by an average of 18% from west to east, before a sheer cliff into the water.</p> <p>The site has some planter boxes, shrubbed areas and a small garden area along the southern boundary.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by other dwelling houses with multiple different architectural styles, residential flat buildings and dual occupancy's.</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:

- DA2010/1007 - Alterations & additions to a dwelling house approved 28 July 2010
- DA2010/1194 - Alterations and additions to a dwelling house, construction of a swimming pool and new front fencing approved 12 October 2010
- DA2017/0040 - Alterations and Additions to existing dwelling house (withdrawn)
- **DA2018/0612 - Alterations and additions to a dwelling house approved 23 August 2018**
- DA2018/1892 - Demolition works and construction of a swimming pool approved 18 March 2019

In relation to **DA2018/0612**, the approval was the subject of a complaint in relation to the lack of consideration of a submission made by an objector in the Assessment Report. Consequently, the current application was lodged to address matters raised in that submission in relation to building height and impact on views.

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks to modify the approved development consent of additions to an existing dwelling (DA2018/0612) approved 23 August 2018 as follows:-

- Provide new 1 degree roof pitch over southern portion of dwelling providing for a maximum level RL42.00
- New metal roof to replace existing tiled roof.
- New external stair adjacent to southern boundary to provide access to service courtyard.
- Extend lounge over existing courtyard and extend to garage.
- Internal changes to create a more functional floor plan.
- New balcony on front northwest and southwest corners.
- Provide balcony to bedroom 3 on eastern elevation.
- Remove windows on southern elevation serving bedroom 4 and 5.

- Provide new window on southern elevation serving bathroom.
- Reduce the proposed floor area of the upper level
- Increase setback from southern side boundary from 1.1m (SW corner), 1.5m (SE corner) to 1.9m (SW corner) & 2.243m (SE corner)
- Reduce depth of balcony on rear (eastern) elevation.
- Delete window on northern elevation of ground floor dining room.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/0612, 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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/0612,
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require,	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.

Section 4.55(1A) - Other Modifications	Comments
<p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was received on 13 May 2019 from the applicants/owners architect.</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>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 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>Clause 98 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) 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>
<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>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</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 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 4 submission/s from:

Name:	Address:
Mrs Vivienne Merle Woods	1 / 4 Pavilion Street QUEENSCLIFF NSW 2096
Stephanie Jayne Degiorgio	1 / 5 Pavilion Street QUEENSCLIFF NSW 2096
Ms Elyane Joy Messara	9 Pavilion Street QUEENSCLIFF NSW 2096
Estelle Zappia	

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

- View loss;
- The development seeks to extend over the building line setbacks;
- The western elevation diagrams do not adequately depict what is intended to be built;
- The extension of the Level 1 living room into the courtyard and height of the roof over this area;
- Privacy;
- Floor area to landscaped area (non compliance);
- The height of proposed landscaping on the garage to be limited to height of 2 metres by condition (views); and
- The planting within the eastern planter boxes be limited to low growth by condition (views)
- Devaluation of property
- Site inspections

The matters raised within the submissions are addressed as follows:

- **View loss**

Comment: Site inspections were undertaken from 1/5 Pavilion Street, 1/4 Pavilion Street, 4/4 Pavilion Street and 9 Pavilion Street in relation to the current application and the assessment of views. A detailed assessment has been undertaken in relation to Clause D7 Views within the Warringah Development Control Plan 2011 and applied the view sharing principles of Tenacity vs Warringah Council.

In summary, it is considered that some view loss will occur for surrounding properties, in particular from Units 1 & 4 at 4 Pavilion Street, however given this proposed modification reduces the proposed height (now compliant with 8.5m height control) and reduces the scale of the development (from the previous approval - DA2018/0612), it is considered that this issue does not warrant further amendment or refusal of the application. Amended plans were received from the owners architect removing any planting from the garage roof top terrace on 31 May 2019 and hence the condition recommended by Councils Landscape Advisor is not required, however the condition for the new planter boxes on the eastern elevation (Level 1) will be applied to ensure reasonable view sharing.

Given the above it is considered that the proposed application satisfies this issue subject to appropriate conditions for planting for planter boxes on the eastern elevation (terrace level).

- **The development seeks to extend over the building line setbacks**

Comment: The proposed development will extend slightly over the Coastal Cliffs Setback defined under the Warringah Development Control Plan (WDPC). It is noted that the proposed operable roof over the existing terrace and planter box have been considered in detail via

Clause B13 Coastal Cliff Setbacks of WDCP are acceptable in this instance. Additionally, it is noted there similar lightweight structures which are built beyond the Coastal Hazard Boundary.

Given the above, it is considered that this issue does not warrant refusal or further amendment via condition(s).

- **The western elevation diagrams do not adequately depict what is intended to be built**

Comment: A site inspection was undertaken on 23 May 2019 with the owner of No. 9 Pavilion Street in relation to this issue and a number of other issues raised the submission. A review of the external plans (available online) and the internal plans demonstrates that the balconies on Level 2 are to be modified by this current application. It is noted that on the northeast balcony, on Level 2, is only altered by deletion of the installation of new sliding door and glazing.

Given the above it is considered that issue does not warrant refusal and/or further amendment by condition(s).

- **The extension of the Level 1 living room into the courtyard and height of the roof over this area**

Comment: Issues were raised about the proposed extension of the living room into the existing courtyard area on the northwest corner (Level 1), in particular the raised height of the roof, which matched in with the existing garage roof level. Amended plans were received from the owners/applicants architect on 13 May 2019 reducing the height of the roof area over the new extension of the living area. It is noted that the proposed reduction of the roof over the living room extension complies with the requirements of the relevant Warringah Local Environmental Plan 2011 and Warringah Development Control Plan.

Given the above, it is considered that issue does not warrant refusal and/or amendment via condition (s).

- **Privacy**

Comment: A site inspection was undertaken on 23 May 2019 by the assessment officer at No. 9 Pavilion Street with the owner. It is noted the concerns about the height of the roof over the living room extension has now been amended by the owners architect and an amended plan was submitted to Council on 13 May 2019. It is noted there is no proposed walkway from the dwelling to the roof top terrace area on top of garage as proposed by this application.

Given the above, it is considered that reasonable levels of privacy have been maintained by the proposed modified development and that issue does not warrant refusal or further amendments by condition(s).

- **Floor area to landscaped area (non compliance)**

Comment: Issues were raised in relation to the increased floor area within the dwelling house via this proposed modification (application). A review of the plans notes the landscaped open space required for this site is 40% (364.2sqm) and the proposed development is 45% (405.5sqm). It is noted there is no floor space ratio (FSR) as part of the Warringah Local Environmental Plan 2011 or Warringah Development Control Plan.

Given the above it is considered that issue does not warrant refusal and/or amendment via

condition(s).

- **The height of proposed landscaping on the garage to be limited to height of 2 metres by condition (views)**

Comment: Amended plans were received from the owners architect removing any planting from the garage roof top terrace on 31 May 2019 and hence the condition recommended by Councils Landscape Advisor will not be imposed.

Given the above it is considered that issue does not warrant refusal and/or amendment via condition(s).

- **The planting within the eastern planter boxes be limited to low growth by condition (views)**

Comment: Appropriate conditions will be included ensuring that planting within the planter boxes on the eastern elevation (terrace level/level 1) are low in height, thus ensuring minimal and reasonable impact on views.

Given the above it is considered that issue does not warrant refusal and/or amendment via condition (s).

- **Devaluation of property**

Comment: Issues were raised about the devaluation of property caused by the proposed development. The Environmental Planning and Assessment Act 1979 - Section 4.15 Evaluation does not consider the devaluation of property as a matter for consideration and therefore this issue does not warrant refusal and/or further amendment via condition(s).

- **Site inspections**

Comment: Requests for site inspections from adjoining and surrounding property owners were made to Council and a number of site inspections were undertaken from all properties which made a submission to the current application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objections to the proposed modification in general terms. If planting heights are to be restricted, the conditions below may be included. Feel free to amend as required to address issues raised.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A344176 dated 15 April 2019).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

Not applicable.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not applicable.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*

- (b) *the proposed development:*
- (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

Not applicable.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*

- (g) *the use of the surf zone.*

Comment:

A site inspection with Council's Planner on 23 May 2019 and the following comments were:-

The current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. No Aboriginal heritage sites or areas of potential were identified.

Given the above, it is considered that there are no Aboriginal heritage issues for the proposed development.

The development will have no impact on marine environment as the property is significantly above the water. Hence, no special conditions have are required in this respect.

It is considered that the proposed development will satisfy all the above objectives.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

It is considered that the proposed design and siting of the works will have minimal impact on the land and is deemed to satisfy this objective.

14 Development on land within the coastal use area

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk,

scale and size of the proposed development.

Comment:

It is considered that the proposed design and siting of the works will have minimal impact on the land and is deemed to satisfy the above objectives.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

It is considered that the proposed design and siting of the works will have minimal impact and is unlikely to cause an increased risk of coastal hazards on the land and is deemed to satisfy the above objective.

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	9.2m	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
Part 5 Miscellaneous provisions	Yes
5.5 Development within the coastal zone	Yes
5.10 Heritage conservation	Yes
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Clause	Compliance with Requirements
Schedule 5 Environmental heritage	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	5.5m - 7.8m	8.2m	No
B3 Side Boundary Envelope	5m (north)	Within Envelope	No Change	Yes
	5m (south)	Breach of 1.2m (height) for 8m (length)	Breach of 0.6m (height) for 9.7m (length)	No
B5 Side Boundary Setbacks	0.9m (north)	0.9m	No Change	Yes
	0.9m (south)	1.1m - 1.5m	1.1m - 1.5m	Yes
B7 Front Boundary Setbacks	6.5m	9.7m - 16m	7.1m	Yes
B9 Rear Boundary Setbacks	6m*	21m	19.4m	Yes
D1 Landscaped Open Space and Bushland Setting	364.2sqm (40%)	399sqm (44%)	405.5sqm (45%)	Yes

* Rear Boundary Setback - north boundary which is the mean high water mark

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	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
B13 Coastal Cliffs setback	No	Yes
Part C Siting Factors	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The maximum wall height on the south elevation of the proposed works is estimated at 8.2m. This represents a 13.9% variation with the maximum wall height of 7.2m.

Merit consideration:

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

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

Comment:

The south elevation of the proposed works are not readily visible from the street, given the topography of the site, which falls to the east towards the sea cliffs. Adjoining the site to the south is a six-level residential flat building, with many of the dwellings in this building well above the level of the existing dwelling and the proposed works. To the east of the dwelling is a cliff, in excess of 20m in height, adjoining the foreshore which serves as the eastern boundary of the site. Under these circumstances the visual impact of the breach will be minimal.

Given the above it is considered that the proposal is consistent with this objective.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

No significant tree canopy exists on the site, or on adjoining land, given the foreshore location. It is considered that the proposal is consistent with this objective.

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

Comment:

A view loss assessment under Clause D7 Views of the WDCP for this modified proposal is provided in this report. In summary, there will be no adverse loss of views as a result of the proposed non-compliance with the Wall Height control and the proposed overall building height will be reduced on the southern end of the building ensuring reasonable view sharing to adjoining and surrounding properties.

Given the above it is considered that the proposal is consistent with this objective.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

It is considered that the modified proposal will minimise any adverse impact in regard to overshadowing, privacy or view loss. The development is therefore consistent with this objective.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

Minimal excavation is proposed as part of the modified works ensuring that the development responds to the site topography.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The modified roof design on the southern portion of the dwelling provides sufficient pitch and variation in form to comply with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WDCP 2011 and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

The south elevation of the proposed works is outside of the envelope, estimated at a height of 0.6m and a length of 9.7m.

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 development does not become visually dominant by virtue of its height and bulk.*

Comment:

The south elevation of the proposed works are not readily visible from the street, given the topography of the site, which falls to the east towards the sea cliffs. Adjoining the site to the south is a six-level residential flat building, with many of the dwellings in this building well above the level of the existing dwelling and the proposed works. To the east of the dwelling is a cliff, in excess of 20m in height, adjoining the foreshore which serves as the eastern boundary of the site. It is considered that the proposed modified development will be minimised and hence it is deemed that the proposal is consistent with this objective.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

It is considered that the modified proposal will have minimal impacts on adjoining and surrounding properties given the spatial separation between buildings, the reduced height, step in design and altered roof profile from the original approved development ensuring adequate light, solar access and privacy.

Given the above it is considered that the development is therefore consistent with this objective.

- *To ensure that development responds to the topography of the site.*

Comment:

Minimal excavation is proposed as part of the modified works ensuring that the development

responds to the site topography.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B13 Coastal Cliffs setback

Description of inconsistency

The proposed development encroaches into the coastal cliffs setback area.

Merit consideration:

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

- *To limit the bulk and scale of highly exposed cliff top development.*

Comment:

The proposed development is at the existing terrace ground and first level. The new planter and operable roof over the terrace will be the only part of the development that is above ground level. The proposed development will not result in a major difference from what is already present on the site.

- *To maintain the scenic quality of the cliffs.*

Comment:

The proposed roof over the terrace and the planter box are considered to have a very minor impact on the scenic quality of the cliffs as it is on an already built form. The existing terrace already partially encroaches into the coastal cliffs setback area.

- *To ensure views are maintained from the land to which the Coastal Cliffs setback applies.*

Comment:

As discussed roof over the terrace and the planter box is at the terrace ground and first floor levels and considered to maintain any views (with minimal 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 S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

Merit consideration

View loss was raised as a concern by the owners of the following properties:

- 1/4 Pavilion Street
- 4/4 Pavilion Street
- 1/5 Pavilion Street
- 9 Pavilion Street

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

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

○ **1/4 Pavilion Street**

Comment: A site inspection was undertaken on the 22 May 2019 from this property (unit within a residential flat building) located on the first floor on the front north-east corner of the building. The unit currently has partial water views due to the location/height of the unit, existing vegetation and existing dwellings which obscure the view.

○ **4/4 Pavilion Street**

Comment:A site inspection was undertaken on the 28 May 2019 from this property (unit within a residential flat building) located on the second floor on the rear southeast corner of the building. The unit currently has partially water and headland views due to the location/height of the unit (which located at the rear of the building) and therefore the view is obscured by the adjoining dwelling (2B Pavilion Street) to east.

○ **1/5 Pavilion Street**

Comment: A site inspection was undertaken on the 22 May 2019 from this property (unit within a residential flat building on the ground floor level of the building. The unit currently has partial water/beach views via the external louvres fixed to this building.

○ **9 Pavilion Street**

Comment: A site inspection was undertaken on the 23 May 2019 from this property (two

storey dwelling house). The dwelling currently has views of Manly Beach, including the interface of the ocean/land and views of St Patricks Cathedral.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

1/4 Pavilion Street

Comment: The view is achieved over the eastern side boundary from a standing position.

4/4 Pavilion Street

Comment: The view is achieved over the eastern side boundary from a standing and sitting position.

1/5 Pavilion Street

Comment: The view is achieved over the western side boundary from a standing and sitting position.

9 Pavilion Street

Comment: The view is achieved over the southern side boundary from a standing and sitting position.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

1/4 Pavilion Street

Comment: The view is achieved from a bedroom, living room and balcony located on the eastern side of the unit. The view loss is assessed as minor/moderate given the view is achieved over a side boundary, obscured by existing vegetation and buildings.

4/4 Pavilion Street

Comment:The view is achieved from a living room and balcony located on the eastern side of

the unit. The view loss is assessed as minor given the view is achieved over a side boundary, obscured by existing vegetation and buildings. It is noted that this unit has iconic views of Manly Beach including headland views and St Patricks Cathedral which are unaffected by the proposal.

1/5 Pavilion Street

Comment: The view is achieved from a living room and kitchen located on the western side of the unit. The view loss is assessed as minor given the view is achieved over a side boundary, obscured by external louvres affixed to this residential flat building (5 Pavilion Street). It is noted that this unit has iconic views of Freshwater Beach, ocean views and headland views which are unaffected by the proposal.

9 Pavilion Street

Comment: The view is achieved over the southern side boundary from a standing and sitting position. The view loss is assessed as negligible/minor as amended plans were received on 31 May 2019 from the owners of 7 Pavilion Street architect which removed any proposed landscaping from the plans. A condition will be added to maintain planting within the eastern planter boxes roof top terrace to a maximum height of 2.0m to ensure reasonable views are maintained. It is noted that this dwelling has iconic views of Freshwater Beach, ocean views and headland views which are unaffected by the proposal. Views to Manly Beach including St Patricks Cathedral will be maintained.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

1/4 Pavilion Street

Comment: As stated above, the view is achieved from a bedroom, living room and balcony located on the eastern side of the unit. The view loss is assessed as minor/moderate given the view is achieved over a side boundary, obscured by existing vegetation and buildings. The variations to the wall height and side boundary envelope (south) are considered reasonable given the reduction of the overall size of the building from the original approval when viewed from street and this unit.

Given the above it is considered that view sharing is reasonable.

4/4 Pavilion Street

Comment: As stated above the view is achieved from a living room and balcony located on the eastern side of the unit at the rear of the residential flat building. The view loss is assessed as minor given the view is achieved over a side boundary, obscured by existing vegetation and

buildings (in particular 2B Pavilion Street). It is noted that this unit has iconic views of Manly Beach including headland views and St Patricks Cathedral which are unaffected by the proposal. The variations to the wall height and side boundary envelope (south) are not readily viewable given the acute angle created by this view corridor from the living room.

Given the above it is considered that view sharing is reasonable.

1/5 Pavilion Street

Comment: As stated above, subject to conditioning the planting within the planter boxes on the eastern elevation the proposed modifications are considered reasonable. It is noted that this modified proposal reduces the height and size of the building from the previous approval. It is noted there are variations to the wall height and side boundary envelope (south) actually reduce the impact on the views compared to the original approved development (DA2018/0612).

Given the above it is considered that view sharing is reasonable.

9 Pavilion Street

Comment: As stated above, subject to conditioning the planting on the roof terrace above the garage and the planter boxes on the eastern elevation the proposed modifications are considered reasonable. It is noted that this modified proposal reduces the height and size of the building from the previous approval (DA2018/0612). It is noted that there are variations to the wall height and side boundary envelope (south) which are on the other side of the dwelling and therefore have no impact on the views achieved from the first floor level. Amended plans have removed landscaping from the roof top terrace above the garage and conditions have added to the proposed eastern planter boxes on the terrace level.

Given the above it is considered that view sharing is reasonable.

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

Comment:

The modified proposal demonstrates innovative design solutions ensure the overall proposal will improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

The modified proposal will not affect the existing trees located on the site ensuring compliance with merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0173 for Modification of Development Consent DA2018/0612 granted for alterations and additions to a dwelling house on land at Lot 1 DP 900658,7 Pavilion Street, QUEENSCLIFF, 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
DA03 (Rev D)	31 May 2019	Corben Architects
DA04 (Rev C)	30 May 2019	Corben Architects
DA05 (Rev C)	30 May 2019	Corben Architects
DA06 (Rev A)	15 April 2019	Corben Architects
DA07 (Rev A)	15 April 2019	Corben Architects
DA08 (Rev C)	30 May 2019	Corben Architects
DA09 (Rev C)	30 May 2019	Corben Architects
DA10 (Rev A)	15 April 2019	Corben Architects
DA11 (Rev C)	30 May 2019	Corben Architects
DA12 (Rev C)	30 May 2019	Corben Architects
DA13 (Rev C)	30 May 2019	Corben Architects
DA14 (Rev A)	15 April 2019	Corben Architects
DA20 (Rev A)	15 April 2019	Corben Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment	17 April 2019	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA21 (Rev A)	15 April 2019	Corben Architects

Waste Management Plan		
Drawing No.	Dated	Prepared By
DA22 (Rev A)	15 April 2019	Corben Architects

d) The proposed fireplace(s) are to be gas powered and not solid fuel heater.s)

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

B. Add Condition 7A - External Finishes to Roof to read as follows:

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

C. Add Condition 16 - Height of vegetation to read as follows:

Any planting on the eastern side of the site is to be maintained at a height not exceeding 1.8 metres, as measured from the ground level adjacent to the trunk of the tree/shrub.

Reason: Protection of local amenity and views.

D. Add Condition 17 - Landscape maintenance to read as follows:

i) Trees, shrubs and ground cover plants required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

ii) Landscape plantings are to be maintained at the height as specified in these conditions of consent for the life of the development.

Reason: To maintain local environmental amenity.

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

Signed



Phil Lane, Principal Planner

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



Findlay

Steven Findlay, Manager Development Assessments