

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0496
Responsible Officer:	Kelsey Wilkes
Land to be developed (Address):	Lot 8 DP 758566, 49 Cashel Crescent KILLARNEY HEIGHTS NSW 2087
Proposed Development:	Modification of Development Consent DA2019/1537 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:	No
Owner:	Jonathan James Kaufman
Applicant:	Jonathan James Kaufman
Application Lodged:	13/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/10/2020 to 03/11/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent to modify DA2019/1537 for which consent was granted on 26 February 2020 for alterations and additions to a dwelling house. The proposed modifications include:

- Construction of a solid fuel fireplace to the ground floor family room
- Raising of the approved upper floor level by 180mm to RL 116.58
- Raising of the roof ridge by 340mm to RL 121.16
- Addition of a skylight to master bedroom

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 - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 8 DP 758566 , 49 Cashel Crescent KILLARNEY HEIGHTS NSW 2087
Detailed Site Description:	<p>The subject site consists of Lot 8 Section 95 in DP 758566 and is located on the north western side of the cul de sac on Cashel Crescent, Killarney Heights.</p> <p>The site is irregular in shape with a curved frontage of 9.7m along Cashel Crescent, northern side boundary depths of 32.665m and 28.27m and a southern side boundary depth of 41.95m. The site has a surveyed area of 904.22m². The site is located within the R2 Low Density Residential zone and accommodates an existing single storey dwelling and attached garage and an in-ground swimming pool at the rear.</p> <p>The site falls gradually from north east to south west (rear to front) at an average angle of 5 degrees.</p> <p>Landscaping on site is characterised by mature native and non-native trees, small to medium shrubs and areas of lawn.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

one and two storey dwellings of varying ages, sizes and architectural styles. The rear of the site adjoins a vegetated reserve which leads to Forestville War Memorial Playing Fields.

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:

DA2019/1537

Alterations and additions to a dwelling house - Approved 26 February 2020

DA2007/1150

Swimming pool, spa, retaining walls and landscaping - Approved 11 February 2008

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 DA2019/1537, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p><i>The proposal largely relates to the raising of the approved upper floor level and height of the dwelling. The modification is minor and insignificant to the extent which the change is considered to be of minimal environmental impact. The modification does include the addition of a solid fuel fireplace to the existing lower level family room. This has been reviewed by Council's Environmental Health Officer who has recommend approval, subject to conditions to ensure any impact from this addition is minimal.</i></p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>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 DA2019/1537 for the following reasons:</p> <p><i>While the proposed modification includes a slight raise in the height of the dwelling, it is considered minor to the extent that the appearance of the dwelling would maintain a consistent visual bulk and scale when viewed from adjoining sites, the streetscape and public spaces than that already approved. The proposed works make no changes to the approved dwelling footprint or the external context of the site.</i></p> <p><i>As such, it is considered the proposed works are substantially the same as that already approved.</i></p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider 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><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A cover letter with reference to the proposed modifications was submitted with the application that included a certificate (prepared by Ronald Coffey, dated 20 September 2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/10/2020 to 03/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Solid Fuel/Oil Heater)	<p>General Comments</p> <p>Fireplace to be installed according to below conditions.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	No objections to the proposed Modification.

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 19 - Bushland in Urban Areas

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

- (c) the need to retain any bushland on the land,*
- (d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

Comment:

The proposal modifications will have no impact on existing vegetation within the site or any adjoining sites. The original application was referred to relevant referral bodies including Council's Bushland and Biodiversity Officer and Parkes and Reserves team who recommended approval and raised no concerns regarding that mentioned above. The proposed modification is substantially the same as that already approved and as such, it is considered there will be no additional impact on that mentioned above.

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. A361759_02 dated 11 September 2020).

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

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
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Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.9m	8.24m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	5.7m	5.8m	Yes
B3 Side Boundary Envelope	4m (North)	Within	Unchanged	Yes
	4m (South)	Within	Unchanged	Yes
B5 Side Boundary Setbacks	0.9m (North)	5.6m	Unchanged	Yes
	0.9m (South)	7.2m	Unchanged	Yes
B7 Front Boundary Setbacks	6.5m	20.6m	Unchanged	Yes
B9 Rear Boundary Setbacks	6m	16.7m	Unchanged	Yes
D1 Landscaped Open Space and Bushland Setting	40% (361.688m ²)	31% (280.3m ²)	Unchanged	No (Approved under DA2019/1537)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

This clause requires the subject site to provide 40% of the site area as landscaped open space. The proposed landscaped open space on site is calculated as a non-compliant 31%. This is unchanged from what was supported on merit under the DA2019/1537. As the proposed modification does not alter the calculation from that already approved, the non-compliance is supported in this 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 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0496 for Modification of Development Consent DA2019/1537 granted for alterations and additions to a dwelling house on land at Lot 8 DP 758566,49 Cashel Crescent, KILLARNEY HEIGHTS, 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
2019-01, Issue B, Site Plan	11 September 2020	Freshwater Blue Pty Ltd
2019-03, Issue B, Ground Floor Plan	11 September 2020	Freshwater Blue Pty Ltd
2019-04, Issue B, Upper Floor Plan	11 September 2020	Freshwater Blue Pty Ltd
2019-05, Issue B, Roof Plan	11 September 2020	Freshwater Blue Pty Ltd
2019-06, Issue B, North & South Elevations	11 September 2020	Freshwater Blue Pty Ltd
2019-07, Issue B, East & West Elevation	11 September 2020	Freshwater Blue Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment Cover Letter	20 September 2020	Ronald Coffey

Geotechnical Cover Letter	15 September 2020	White Geotechnical Group
BASIX Certificate no. A361759_02	11 September 2020	Freshwater Blue Pty Ltd

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

d) 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 15 - Installation of solid / fuel burning heaters to read as follows:

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of an Occupation Certificate.

Reason: To ensure the installation is completed in a legislatively compliant manner.

Add Condition 16 - Certification of solid fuel burning heaters to read as follows:

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of an Occupation Certificate.

Reason: To ensure the system operates in a legislatively compliant manner.

Add Condition 17 - Maintenance of solid fuel heaters to read as follows:

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

Add Condition 18 - Operation of solid fuel burning heaters to read as follows:

You must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood

- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

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

Signed



Kelsey Wilkes, Planner

The application is determined on 06/11/2020, under the delegated authority of:



Rodney Piggott, Manager Development Assessments