

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0144
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 19 DP 758016, 18 Libya Crescent ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Modification of Development Consent DA2021/1190 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:	Matthew John Blackband Nicole Lee Blackband
Applicant:	Nicole Lee Blackband

Application Lodged:	07/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	21/04/2022 to 05/05/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification application seeks to delete Condition 7 of DA2021/1190 that reads as follows:

7. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- *A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost south-eastern edge of the first floor balcony located off the sitting room as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.*

- Window (W8) on the south-eastern elevation shall be opaque glazing to a minimum height of 1.5m (when measured from the finished floor level), or incorporate external fixed panels or louver style vertical privacy screening (with a maximum spacing of 20mm) to a minimum height of 1.5m over window (W8).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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 - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 19 DP 758016 , 18 Libya Crescent ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Libya Crescent. The site is irregular in shape with a angled frontage of 26.43m along Libya Crescent and a maximum depth of 57.17m. The site has a surveyed area of 1027m². The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a dwelling house and swimming pool currently on the site.

The site slopes from the northern front boundary upwards to the rear southern boundary over approximately 6 metres.

The site contains rocky gardens, lawn areas, hedges, and trees. There are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one and two storey dwellings varying in architectural style and design.

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:

DA2013/0794

Development Application for Alterations additions to a dwelling house.
Approved on 16 September 2013.

CC2013/0467

Construction Certificate for Alterations additions to a dwelling house.
Approved on 3 October 2013 by External Private Certifying Authority.

PCA2013/0859

Appointment of Principal Certifying Authority / Notice of Commencement.
Dated 3 October 2013 by External Private Certifying Authority.

DA2021/1190

Development Application for Alterations and additions to a Dwelling House.
Approved on 7 October 2021.

REV2022/0002

Review for Alterations and additions to a Dwelling House.
Returned on 14 March 2022 due to incomplete documentation.

CC2022/0474

Construction Certificate for Alterations and additions to a Dwelling House.
Approved on 10 May 2022 by External Private Certifying Authority.

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 DA2021/1190, 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 for the following reasons: • The proposed modification is considered to be of minimal environmental impact, as the proposal is requesting the deletion of Condition 7. • In this regard, the proposed modification does not result in any built form control amendments.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for	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

Section 4.55(1A) - Other Modifications	Comments
which consent was originally granted and before that consent as originally granted was modified (if at all), and	approved under DA2021/1190 for the following reasons: - 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 DA2021/1190. - The proposed modification specifically relates to a condition imposed under DA2021/1190, therefore the modification is in relation to the original consent.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	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.
(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

Section 4.15 'Matters for Consideration'	Comments
	risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 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. <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. <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. <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. <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. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	(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.

Section 4.15 'Matters for Consideration'	Comments
environment and social and economic impacts in the locality	(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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 Bush Fire Report was submitted with the Development Application 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 for the Development Consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/04/2022 to 05/05/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Applicant seeks approval to delete a condition relating privacy screen. No Development Engineering objection with no conditions.

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.

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	5.9 - 7.9m	unaltered	-	Yes

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

There are no proposed changes to the Built Form Controls as approved under DA2021/1190.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Detailed Assessment

D8 Privacy

The proposed modification application is seeking to delete Condition 7 that was imposed in relation to perceived privacy impacts to the adjoining site at No.16 Libya Crescent.

The modification application was notified in accordance with Northern Beaches Council Community Participation Plan (CPP) and no submissions were received. Additionally, Council's Assessment Officer emailed the adjoining site at No.16 Libya Crescent, to request access to visit the site to view the proposal from the neighbouring site. However after 7 days no written email response was received.

The requirements of D8 of WDCP 2011 are outlined below:

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
- 4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
- 5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

In this instance, the deletion of Condition 7 has been assessed against the objectives of the control. In this circumstance, the proposed modification is considered supportable as the deletion of Condition 7 will not result give rise to any unreasonable privacy impacts.

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 as amended via deletion of Condition 7, will ensure the propose development is sited and designed to provide a high level of visual and acoustic privacy for occupants and neighbours. It is important to note that the proposed balcony and window (W8) are orientated to face the distanced ocean views located to the north and panning to the south-east from the subject site. As such, it is not considered reasonable that the users of the balcony would face the opposite direction towards the south to the front balcony of No.16 Libya Crescent.

Furthermore, the front yard of No.16 Libya Crescent is not the principal private open space and therefore in accordance with requirements outlined above, balcony designs are only required to screen principal private open spaces. The front balcony of No.16 Libya Crescent is distanced approximately 10 metres from the first floor balcony and window (W8) and therefore this is not considered to be a close or direct view.

As such, the applicant has provided photos demonstrating the approximate location of the first floor balcony. Upon review of the site photos provided it is considered the proposed balcony and window (W8) would not give rise to unreasonable privacy impacts to the adjoining site at No.16 Libya Crescent.

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

Comment:

The proposal has included innovative design solutions to improve the urban environment, that include limitation of windows along the eastern façade to mitigate any unreasonable privacy impacts.

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

Comment:

The proposal development will provide personal and property security for occupants and visitors.

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 2021

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. Mod2022/0144 for Modification of Development Consent DA2021/1190 granted for alterations and additions to a Dwelling House on land at Lot 19 DP 758016, 18 Libya Crescent, ALLAMBIE HEIGHTS, subject to the conditions printed below:

A. Delete Condition 7 - Amendments to the approved plans to read as follows:

The following amendments are to be made to the approved plans:

- A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost south-eastern edge of the first floor balcony located off the sitting room as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- Window (W8) on the south-eastern elevation shall be opaque glazing to a minimum height of 1.5m (when measured from the finished floor level), or incorporate external fixed panels or louver style vertical privacy screening (with a maximum spacing of 20mm) to a minimum height of 1.5m over window (W8).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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

Signed



Stephanie Gelder, Planner

The application is determined on 25/05/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments