

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0269
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 15 DP 241344, 30 Lyly Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Modification of Development Consent DA2016/0117 granted for construction of 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:	Irwin Ka Pui Wan
Applicant:	Australian National Builders Pty Ltd
Application Lodged:	25/06/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	03/07/2020 to 17/07/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks retrospective approval for the following works within the rear yard:-

- Rear terrace
- Retaining wall
- Northern planter box

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 - B5 Side Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 15 DP 241344 , 30 Lyly Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The site comprises Lot 15, Section 183, DP 241344, 30 Lyly Road, Allambie Heights. It is located on the western side of Lyly Road to the north of the intersection with Allambie Heights Road. The site is rectangular in shape, with a frontage of 15.415m to Lyly Road to the east, a northern side boundary of 37.22m, a southern side boundary of 39.26m, and a western rear boundary of 18.555m. The site area is 707.3m². The site slopes steeply from the south-western corner down to the north-eastern corner. The total fall is approximately 18m, representing a slope of 41.9%. The site now has a three (3) house with a detached garage and driveway with landscaping.

Map:



SITE HISTORY

PLM2014/0101 - Prelodgement meeting for the the construction of a dwelling house and garage - 2 October 2014

DA2014/1228 - Construction of a dwelling house and garage - Withdrawn

- No 'due diligence' report was submitted by a qualified Aboriginal heritage professional with the DA.

DA2015/0688 - Construction of a dwelling house - Withdrawn

- The development was not consistent with the Objectives of WDCP 2011 Clause E6 Retaining Unique Environmental Features.

DA2016/0117 - Construction of a dwelling house - Approved - 19 July 2016

MOD2018/0271 - Modification of consent to DA2016/0117 granted for construction of a dwelling house - Approved - 25 October 2018

MOD2020/0094 - Modification of Development Consent DA2016/0117 granted for construction of a dwelling house - Approved - 20 May 2020

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 DA2016/0117, 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 proposal seeks retrospective approval of the rear terrace and planter boxes of the northern side boundary while increasing the landscape open space from 27.4% to 32.7%.
(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 DA2016/0117 for the following reasons: The proposal is now deemed to be generally consistent with the original approval given the increased landscape open space.
(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	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
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	
(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)(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>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

Section 4.15 'Matters for Consideration'	Comments
	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.
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	(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. (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 original application that included a certificate (prepared by Bush Fire Planning Services, dated 17 August 2014) 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 within the original consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/07/2020 to 17/07/2020 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
Landscape Officer	
Landscape Officer	The landscape plan submitted with the proposal is noted. The landscape plan indicates predominately native plant species in the remaining soft landscape areas. The rear of the site indicates a row of trees/shrubs that have not been identified on the plan as particular species. In order to provided suitable planting a condition has been provided indicating performance specification for the plants. It is noted that the rear terrace has already been constructed. It is recommended that the landscape plan be implemented to ensue remaining soft landscape areas are provided to assist with providing privacy and mitigating the bulk and scale of the development.
NECC (Development Engineering)	The proposed modification does not alter the original assessment of the application by Development Engineering. No objection to approval with no additional or modified conditions of consent 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

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.

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

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 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Pro
B5 Side Boundary Setbacks	0.9m (south)	1.9m (dwelling)	(
	0.9m (north)	4.37m (dwelling)	(
B9 Rear Boundary Setbacks	6m	12.68m	'
D1 Landscaped Open Space	40% (282.9sqm)	35.5% (251.3sqm)	32.7%

and Bushland Setting			
----------------------	--	--	--

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
B5 Side Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
Part C Siting Factors	Yes	Yes
C5 Erosion and Sedimentation	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	No	Yes
D2 Private Open Space	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 of the Warringah Development Control Plan 2011 (WDGP 2011) requires development to be setback at least 0.9m from side boundaries. The retaining wall is located 0.6m from the southern side boundary and 0.4m from the northern side boundary, which conflicts with the 0.9m requirement.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The retrospective works associated with this application did not necessitate the removal of trees or significant landscape features. The existing and proposed landscape treatments on site comprise landscaped open space, numerous small shrubs and a two canopy trees which can achieve a height over 10m. This assessment concludes that the existing landscaped features on site are appropriate for a residential development within a low density environment.

- *To ensure that development does not become visually dominant.*

Comment:

The proposed landscaping works will ensure the development will not be visually imposing when viewed from street and adjoining properties.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The proposed landscaping work will ensure the bulk and scale of the recent constructed dwelling and garage is minimised, despite this non-compliance.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

Given the location of the retaining wall and planter boxes in the rear yard it is considered that are no unreasonable privacy or amenity impacts will arise and reasonable solar access is maintained to the adjoining properties.

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

Comment:

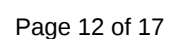
Given the location of the works within the rear yard it is that the proposal would allow for reasonable view sharing.

Having regard to the above assessment, it is concluded that the applicable objectives of the control have been achieved. Therefore, the application is supported on merit.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed rear boundary setback to the retaining wall is 1.8m where the requirement is for 6m. The proposed retaining wall/terrace and planter boxes occupies (62.5%) more than 50% of the rear setback area and does not qualify for an exemption.



space of sufficient dimensions to enable the establishment of vegetation remains onsite.

- *To create a sense of openness in rear yards.*

Comment:

The terrace and landscaped area between the rear boundary and the top of the retaining wall will ensure a sense of openness in the rear yard is maintained.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The amenity of the adjoining land is not unreasonably affected by this proposal. There is no additional overshadowing to the neighbouring site at the rear.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

Landscaped open space continues to be available within the rear yard and the proposed terrace, retaining wall and planter boxes are not structures of significant height, ensuring minimal disruption of the existing pattern of buildings, rear gardens and landscape elements

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

A reasonable level of privacy is maintained between the dwelling and neighbouring dwellings.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposed landscaped open space will be deficient by 7.3% (51.6sqm) from the required 40% (282.9sqm), with a proposed 32.7% (231.3sqm) of landscaping.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment: The modified proposal will still enable large areas of landscaped open space for planting to be maintain and enhance the streetscape of Lyly Road ensuring compliance with this merit consideration.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment: The modified proposal will be replanted with a number of trees, shrubs and plantings demonstrating consistency with this merit consideration. It is noted that this new design will preserve natural rock outcrops ensuring compliance with this merit consideration.

Overall it is considered that the proposal demonstrates sufficient compliance with this merit consideration.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment: The modified proposal will allow sufficient areas of landscaped open space to establish a number of shrubs, plantings and trees on the site. These plantings will assist in mitigating the height, bulk and scale of the building ensuring compliance with this merit consideration.

- *To enhance privacy between buildings.*

Comment: The proposed plantings and specific conditions via this application will ensuring reasonable levels of privacy between buildings demonstrating consistency with this merit consideration.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment: There will be sufficient areas to accommodate appropriate outdoor recreational recreational opportunities to meet the needs of the occupants ensuring compliance with this merit consideration.

- *To provide space for service functions, including clothes drying.*

Comment: Adequate areas for service functions such as clothes drying will be included with this proposal ensuring compliance with this merit consideration.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment: Sufficient areas of impervious areas will remain on the site to facilitate water management which will include on-site detention and infiltration of stormwater ensuring compliance with this 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 Section 1.3 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 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. Mod2020/0269 for Modification of Development Consent DA2016/0117 granted for construction of a dwelling house on land at Lot 15 DP 241344,30 Lyly Road, ALLAMBIE HEIGHTS, subject to the conditions printed below:

A. Add Condition No.1E - 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
A104 (Rev D)	14 May 2020	Mark Hurcum Design Practice
A105 (Rec C)	14 May 2020	Mark Hurcum Design Practice
SK03 (Rev A)	18 June 2020	Mark Hurcum Design Practice

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
L-01	2 June 2020	Space Landscape Designs

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

B. Modify Condition 34 - Required Planting to read as follows:

- a) Screen planting along the rear of the site above the terrace is to comprise native species capable of attaining a minimum height of 3 metres at maturity at minimum 3m centres with a minimum pot size of 25 litres at planting.
- b) Planting is to be provided in in a prepared garden bed with suitable soil medium and minimum 75mm mulch.
- c) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity.

C. Add Condition 37 - Landscape completion certification to read as follows:

- a) Landscaping is to be implemented in accordance with the Landscape Plan Drawing No. L-01 Rev C dated 02/06/20 prepared by Space Landscape Designs.
- b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape designer or horticulturalist shall be submitted to the Principal Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.
- c) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or horticulturalist shall be submitted to the Principal Certifying Authority, certifying that the

landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

D. Add Condition 38 - Landscape maintenance to read as follows:

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

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:



Rodney Piggott, Manager Development Assessments