



SECTION 96 (1A) MODIFICATION ASSESSMENT REPORT

Assessment Officer:	Michael Edwards
Address / Property Description:	Lot 2 in DP 418992, 17 Lantana Avenue WHEELER HEIGHTS NSW 2097
Proposal:	Modification of the first floor layout including changes to window sizes
Development Application No:	MOD2009/0015
Plans Reference:	AD2007-003-002, AD2007-003-003, AD2007-003-004, AD2007-003-005
Applicant:	Your Abode Design & Development
Owner:	Jill Collier & Cary Polis
Application Lodged:	02/02/2009
Amended Plans:	NO
Locality:	B7 Narrabeen Lake Suburbs
Category:	Category 1 (housing)
Clause 20 Variations:	NO
Land and Environment Court Action:	NO
Referred to ADP:	NO
Referred to IHAP:	NO
SUMMARY	
Notification:	09/02/2009 to 24/02/2009
Submissions:	Two (2) submissions generated from one (1) property
Submission Issues:	Visual Privacy, Amenity
Assessment Issues:	None
Recommendation:	Section 96 Approval – subject to conditions
Attachments:	Plans



LOCALITY PLAN (not to scale)



Subject Site: Lot 2 in DP 418992, 17 Lantana Avenue WHEELER HEIGHTS
NSW 2097

Notified Residences: Under the provisions of the applicable Development Control Plan the subject application has been notified to the adjoining property owners and occupiers. As such, there were **11** notification letters sent.

The properties notified were consistent with the notification list and notification plan.



SITE DESCRIPTION

Description: The subject site is described as Lot 2 in DP 418992, commonly known as No.17 Lantana Avenue, Wheeler Heights, located off an access handle on the southern side of Lantana Avenue. The site in total comprises an area of 1547.2sqm, is regular in shape and has a north-south orientation. The site has a northern street-front boundary measuring 4.57m, a southern rear boundary measuring 20.115m, a western side boundary in three lengths measuring 63.03m, 15.545m and 60.96m and an eastern side boundary measuring 124.02m.

Topography: The site is considered flat with gentle undulations with a minimal cross fall from the rear of the site towards the street-front. The site is considered predominantly level at the location of the subject dwelling.

Existing Works: Currently, the subject site is vacant with no existing building works. The site is adjoined by detached style residential dwellings, consisting of single and double storey construction within landscaped settings.

Site Burdens / Constraints: Council records do not reveal any site burdens or constraints over the subject site.

RELEVANT BACKGROUND

12/08/2008 Development Consent granted by delegated authority, to Development Application DA2008/0735 for the construction of a two storey dwelling and swimming pool following demolition of the existing dwelling.

PROPOSED MODIFICATION IN DETAIL

The Applicant seeks Council's approval to modify Development Consent DA2008/0735. In more detail, the modifications involve the following:

- Reconfiguration of the upper storey of the approved dwelling to remove one bedroom and relocate the bathroom and increase in size;
- Enlargement of windows to the upper storey on the eastern, western and southern elevations.

AMENDMENTS TO THE PLAN

There are no amended plans for this application.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979;
- b) Environmental Planning and Assessment Regulations 2000;
- c) State Environmental Planning Policy – Building Sustainability Index (SEPP BSI);
- d) State Environmental Planning Policy – Infrastructure;
- e) SEPP No. 55 – Remediation of Land;
- f) Warringah Local Environment Plan 2000;
- g) Warringah Development Control Plan;
- h) Section 94A Developer Contributions Plan (Effective 01 July 2008); and
- i) Draft Environmental Planning Instruments



REFERRALS

The scope of the works did not warrant any referrals to internal or external departments.

NOTIFICATION & SUBMISSIONS RECEIVED

The application was notified in accordance with the Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2000 (WLEP 2000) and Warringah Development Control Plan. Eleven (11) adjoining property owners and occupiers were notified of the application by letter dated 09/02/2009. The notification period was from 09/02/2009 to 24/02/2009.

A total of two (2) submissions were received in response to the application, however, both were generated from one (1) property. As such, a total of one (1) submission was received as identified below:

Date	Submission Received	Address
23/02/2009	Submission - Crowe	16 Rose Avenue NSW WHEELER HEIGHTS NSW 2097

Discussion of the relevant issues raised in the submission received is provided as follows:

i) Visual Privacy

- Concern is raised with regard to the reconfiguration of windows. Specifically, the enlargement of the windows will result in an impact to visual privacy, allowing the occupants of the subject site to overlook into the rear of No.16 Rose Avenue.

A merit assessment of the proposed modifications against the intent of Clause 65 *Privacy* is considered under the General Principles of this report which, demonstrates that the proposal is satisfactory.

In this regard, it is considered that the submission issue does not warrant further amendment or refusal of the application.

ii) Amenity

- Concern is raised with regard to the impact to amenity as currently enjoyed by the occupants and from the proposed future single storey dwelling at No.6 Rose Avenue. Specifically, the provision of three rainwater tanks, loss of landscape vegetation, provision and location of pool pump and location of the clothes line results in a loss of the amenity.

It is noted that the construction of the dwelling as approved under DA2008/0735 provided a complying rear building setback. In addition, a condition of consent was imposed requiring the swimming pool pump to be encased in a sound proof enclosure. The removal of landscape vegetation was also approved under the original DA.

Development consent is not required for the installation of the clothes line. Further, Council cannot make an assessment of the impact to amenity to a future development that does not exist at the time of assessment.



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Accordingly, it is considered that the submission issue does not warrant further amendment or refusal of the application.

MEDIATION

Mediation was not requested for this development application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 96(1)(a) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1)(A)	Comments
Section 96(1)(a)(a) – Is the Modification to Consent of Minimal Environmental Impact?	The minor modifications do not depart from the built form of the dwelling with regard to building height, setback and envelope, as approved under DA2008/0452, which was considered to have a minimal and acceptable environmental impact.
Section 96(1)(a)(b) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	The cumulative extent of the modifications maintains the building footprint and overall building envelope, maintaining the quality and quantum of the dwelling as approved under Development Consent DA2008/0735. It is therefore concluded that the test is substantially the same development as already approved.
Section 96(1)(a)(c)&(d) – Public Exhibition of subject application / submission	See discussion on “Notification and Submissions received” in this report.
Section 96(3) - Consideration such of the matters referred to in section 79(C)(1) as are of relevance to the development the subject of the application	See discussion on “Matters for Consideration under Section 79(C)” in this report.

The relevant matters for consideration under Section 79(C) of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	Refer to discussions on Environmental Planning Instruments as contained in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	Refer to discussions on Draft Environmental Planning Instruments as contained in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan is applicable to this application and the relevant provisions are considered in this report.
Section 79C (1) (a)(iiia) - Provisions of any Planning Agreement or Draft Planning Agreement	None applicable.
Section 79C (1) (a)(iv) - Provisions of the regulations	The provisions of the relevant regulations were considered under the assessment of the original application and the modification works proposed, do not result in any alteration to the compliance with this component as originally assessed.
Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural	The impact on the natural and built environment together with social and economic impacts from the subject site were considered under the assessment of the original application and



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Section 79C 'Matters for Consideration'	Comments
and built environment and social and economic impacts in the locality	the modification works proposed do not result in any significant alteration to the compliance with this component as originally assessed.
Section 79C (1) (c) – The suitability of the site for the development	The suitability of the subject site was considered under the assessment of the original application and the modification works proposed, do not result in any alteration to the compliance with this component as originally assessed.
Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs	In regards to public submissions refer to the discussion on "Notification & Submissions" as contained within this report.
Section 79C (1) (e) – The public interest	The wider public interest is served by the continued maintenance of the site, and its ability to provide an appropriate land use within this locality.

State Environmental Planning Policies

The State Environmental Planning Policies that are relevant to the subject proposal were considered under the original application. The proposed modifications have been tested and determined to be substantially the same development as approved under Development Consent DA2008/0735. In this regard, compliance with the relevant State Environmental Planning Policies is not altered.

Regional Environmental Planning Policies

There were no Regional Environmental Planning Policies relevant to the assessment of the original application. Similarly, there are no Regional Environmental Planning Policies applicable to this modification application.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

The Draft Environmental Planning Instruments that were relevant at the time to the subject proposal were considered under the original application. As the proposed modification seeks the modification of a Condition of Consent, compliance with the relevant Draft Environmental Planning Instruments will not be altered.

STATUTORY CONTROLS

Warringah Local Environmental Plan 2000

Desired Future Character

The subject site is located in the B7 Narrabeen Lake Suburbs Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows:

'The Narrabeen Lake Suburbs will remain characterised by detached style housing in landscaped settings interspersed by a range of complementary and compatible uses which are compatible with the residential nature of the locality. The land occupied by the Cromer Golf Club will continue to be used only as a recreation facility.'

Future development will maintain the visual pattern and predominant scale of existing



detached housing in the locality. The streets will be characterised by landscaped front gardens and consistent from building setbacks. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

The spread of indigenous tree canopy will be enhanced where possible and the natural landscape, such as rock outcrops, remnant bushland and natural watercourses will be preserved. The use of materials that blend with the colours and textures of the natural landscape will be encouraged. Development on hillsides, or in the vicinity of ridgetops, must integrate with the landscape and topography.

The locality will continue to be served by the existing local retail centres in the areas shown on the map. Future development in these centres will be in accordance with the general principles of development control listed in clause 39.'

The proposals consistency with the Desired Future Character Statement was comprehensively considered in the original assessment of the subject application.

The modification maintains satisfactory compliance with the Desired Future Character Statement as assessed under Development Consent DA2008/0735.

As such, it is considered that the modifications maintain consistency with the Desired Future Character Statement and no further assessment is necessary.

Built Form Controls for Locality B7 Narrabeen Lake Suburbs

Built Form Controls were considered as part of the assessment of the original application.

Although the modification works propose material changes to the approved works under Development Consent DA2008/0735, the extent of the proposed modifications are predominantly internal and result in external changes to the fenestration. In this regard, the works do not change the developments numerical and merit compliance with these development standards and is acceptable in this regard

Clause 20 Variation

Clause 20 Variations are not applicable to this development.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

The General Principles of Development Control were considered as part of the assessment of the original application. However, the following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed modification:

General Principles	Applies	Comments	Complies
CL65 Privacy	YES	- The windows on the first floor of the eastern elevation are reconfigured to match the amended internal layout and do not introduce any additional windows. - The aluminium louvered window serving the sunroom on the western elevation is reduced in size.	YES



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General Principles	Applies	Comments	Complies
		- The windows serving the sunroom on the first floor of the southern elevation are increased in size to a sill height of 1000mm. These windows are not considered to result in unreasonable opportunities for overlooking, given the existing separation between buildings and the rear setback of 10.1m to the first floor of the subject dwelling. - As such, it is considered that the increased window sizes will not introduce new unreasonable opportunities for overlooking, satisfying this General Principle.	

SCHEDULES

The relevant Schedules were considered as part of the assessment of the original application. The proposed modification works are considered minor in extent, and as such, it is considered that the modification works will not alter the proposal's consistency with the requirements of the relevant Schedules.

Further, the proposed modification does not necessitate consideration of any further Schedules of WLEP 2000 and is satisfactory in this regard.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan (Effective 1 July 2008)

The application of Council's Section 94A Contribution Plan 2006 was considered under the assessment of Development Application DA2008/0735 and the appropriate fees imposed in the subsequent Development Consent.

Furthermore, the modification works proposed do not alter the previous assessment under this Plan.

OTHER MATTERS FOR CONSIDERATION

There are no other matters for consideration that are relevant in the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79(C) of the Environmental Planning and Assessment Act, 1979, Warringah Local Environmental Plan 2000 and the relevant codes and policies of Council.

The modifications maintains satisfactory consistency with the Desired Future Character Statement, maintains compliance with the Built Form Controls and relevant General Principles as assessed under the original Consent DA2008/0735, maintaining the quantum and quality of the dwelling as approved, and as such, will not result in any unreasonable or adverse impacts on the subject site, adjoining properties, or on the locality.

The application was notified in accordance with the Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2000 (WLEP 2000) and Warringah



Development Control Plan by letter dated 09/02/2009, to eleven (11) adjoining property owners and occupiers. The issues raised in the submission received have been considered and the merit assessment under Clause 65 *Privacy* of the General Principles of Development Control demonstrates that the proposal is satisfactory and does not warrant further amendment to the design of the proposal or warrant the refusal of the application.

There are no adverse impacts or issues arising from the assessment of the modified elements and it is considered that the proposed modification satisfies all other relevant controls, and that all processes and assessments have been satisfactorily addressed. Accordingly, the proposal is recommended for approval.

RECOMMENDATION (SECTION 96(1) APPROVAL)

THAT:

- A)** Council as the consent authority, grant development consent to Modification Application MOD2009/0015 to modify Development Application No: DA2008/0735 for modification of the first floor layout including changes to window sizes, at Lot 2 in DP 418992, 17 Lantana Avenue, Wheeler Heights, subject to following modified conditions and the attached standards conditions;

The following conditions are to be MODIFIED to read as follows:

1. Development in Accordance with Plans (S96 Amendments)

The development being carried out in accordance with plans Reference DA2008/0735 numbered as seen below:

<i>Drawing Number</i>	<i>Title</i>	<i>Prepared By</i>	<i>Revision</i>	<i>Dated</i>
AD-2007-003-002	Ground Floor Plan	Your Abode	A	April 2008
AD-2007-003-003	First Floor Plan	Your Abode	A	April 2008
AD-2007-003-004	East, West, North, South Elevations	Your Abode	A	April 2008
AD-2007-003-005	Section A-A, Section B-B	Your Abode	A	April 2008
AD-2007-003-007	Site Plan	Your Abode	A	April 2008
AD-2007-003-008	Landscape Plan	Your Abode	A	April 2008

Except as modified by Modification 1 Reference MOD2009/0015 plans listed below (refer to the highlighted sections on the plans only):

<i>Drawing Number</i>	<i>Title</i>	<i>Prepared By</i>	<i>Revision</i>	<i>Dated</i>
AD-2007-003-002	Ground Floor Plan	Your Abode	B	August 2008
AD-2007-003-003	First Floor Plan	Your Abode	C	January 2009



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AD-2007-003-004	East, West, North, South Elevations	Your Abode	C	January 2009
AD-2007-003-005	Section A-A, Section B-B	Your Abode	C	January 2009

Reason: *To ensure that the form of the development undertaken is in accordance with the determination of Council - Public Information.*

Signed

Date 26 FEBRUARY 2009

Michael Edwards

Assessing Officer – Development Assessment

Signed

Date 26 FEBRUARY 2009

Ryan Cole

Team Leader – Development Assessment

Development Application: **MOD2009/0015**

Property Address: **17 LANTANA AVENUE, WHEELER HEIGHTS**