

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0329
Responsible Officer:	Michael French
Land to be developed (Address):	Lot 2 DP 232205, 36 Lindley Avenue NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2017/1159 granted for Alterations and Additions to a dwelling house and construction of new retaining wall
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:	Michael John Mahady Kristen Morgan
Applicant:	John Clark

Application Lodged:	05/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/07/2022 to 01/08/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This modification application seeks to amend development consent DA2017/1159, and proposes the following:

- Proposed north-east retaining wall removed.
- Window on southern wall replaced with timber wall framing.
- External window/door and adjacent window toward the north west of the dwelling to be replaced.
- Eastern elevation bathroom window to be replaced. The lower section of the window to be replaced with a timber framed wall.
- Eastern elevation workshop area window to be replaced.
- Proposed first floor balcony to be removed.

- Southern elevation bedroom 2 window to be replaced.
- Proposed sliding glass doors in bedroom 3 and 4 to be removed.
- Existing damaged and leaking windows to bedroom 3 and 4 to be replaced.
- Existing high light windows on western elevation to be replaced.
- Proposed glass balustrading removed, however the the existing steel balustrade is to remain. An upgraded hardwood handrail is proposed on the existing deck.
- Addition of a retractable awning over the deck on the southside of the property.

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 - B9 Rear Boundary Setbacks

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

SITE DESCRIPTION

Property Description:	Lot 2 DP 232205 , 36 Lindley Avenue NARRABEEN NSW 2101
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Lindley Avenue. The site is regular in shape with a frontage of 15.2m along Lindley Avenue and a depth of 40.7m. The site has a surveyed area of 629m². The site is located within the R2 Low Density Residential zone, pursuant to the Warringah Local Environmental Plan 2011 and accommodates a three-storey, split-level dwelling. The site slopes downward towards the rear, north-east

corner of the site.

The site has a mix of vegetation in both the front and rear yards.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar R2 Low Density Residential allotments, with dwellings designed to accommodate the steep sloping area.

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:

DA2017/1159 was consented to on 22.2.2018 for alterations and additions to a dwelling house and will lapse on 22.2.2023.

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 DA2017/1159, 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 changes are considered small in nature and will not have any significant environmental impacts.
(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 DA2017/1159 for the following reasons: The modification does not propose the addition of any significant new built forms. Council considers all changes to be small in nature and substantially the same as those already approved.
(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	There are no current draft environmental planning instruments.
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)	<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 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.
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

Section 4.15 'Matters for Consideration'	Comments
environment and social and economic impacts in the locality	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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/07/2022 to 01/08/2022 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 (Bushland and Biodiversity)	The applicant has provided a letter statement from the arborist who has reviewed the amended plans and concluded that no impact will take place upon any tree/s reported upon in the original arborist report. Therefore the development is unlikely to result in a significant environmental impact.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A459624 25 May 2022).

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	9m	unchanged	No (unchanged)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	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	7.8m (existing building height)	7.8m	No (unchanged)
		7.4m (top floor window proposed to	7.4m	No (unchanged)

		be replaced)		
B3 Side Boundary Envelope	4m	outside envelope (west) (existing building)	no change	No (unchanged)
	4m	outside envelope (east) (existing building)	no change	No (unchanged)
B5 Side Boundary Setbacks	0.9m	1.5m (west)	1.5m	Yes
	0.9m	1m (east)	1m	Yes
B7 Front Boundary Setbacks	6.5m	4.6m (existing front of building)	4.6m	No (unchanged)
		6.2m (ground floor window proposed to be replaced)	6.2m	Yes
B9 Rear Boundary Setbacks	6m	5.8m (Terrace Pergola Roof/ Proposed Retractable Awning)	5.8m	No (unchanged)
D1 Landscaped Open Space	40%	47.78%	47.78%	Yes

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	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed changes to the deck and the addition of a retractable, weatherproof awning, breaches the rear boundary setback by 200mm (a variation of 3.3.%).

Merit consideration:

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

- To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposed development is considered to have a minor impact on opportunity for deep soil landscaping as it is an above-ground structure that breaches the setback by only 200mm.

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

Comment:

The changes to the structure of the deck is not considered to impact the openness of the yard. The retractable awning provides additional potential for perceived openness within the yard.

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

Comment:

The development is not considered to impact the amenity of adjacent land and privacy between buildings.

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

elements.

Comment:

The deck modifications and retractable awning are considered to maintain visual continuity with surrounding developments.

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

Comment:

The awning does not detract from opportunity for the maintenance of privacy between adjacent dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 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

Total open landscape area (47.78%) is existing and will remain unchanged.

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 2022

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. Mod2022/0329 for Modification of Development Consent DA2017/1159 granted for Alterations and Additions to a dwelling house and construction of new retaining wall on land at Lot 2 DP 232205,36 Lindley Avenue, NARRABEEN, 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
21008-A1.00 Rev A	February 2022	JGC Design Services
21008-A2.00 Rev A	February 2022	JGC Design Services
21008-A3.00 Rev A	February 2022	JGC Design Services
21008-A4.00 Rev A	February 2022	JGC Design Services
21008-A5.00 Rev A	February 2022	JGC Design Services
21008-A5.01 Rev A	February 2022	JGC Design Services
21008-A5.02 Rev A	February 2022	JGC Design Services
21008-A5.03 Rev A	February 2022	JGC Design Services

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	31 May 2022	White Geotechnical Group
Arborist Report	7 June 2022	Complete Arborcare
BASIX Certificate- A459624	25 May 2022	JGC Design Services

b) 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.

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

Signed



Michael French, Planner

The application is determined on 10/08/2022, under the delegated authority of:



Steven Findlay, Manager Development Assessments