

RESIDENTIAL DEVELOPMENT

Section 96(1A) Application to Modify a Development Consent ASSESSMENT REPORT

DA No. Mod2010/0148

Assessment Officer: Phil Lane

Property Address: Lot B, DP 365792, No.19 Moore Road, Freshwater

Proposal Description: Modification of consent No. DA2005/0894 for Demolition of an existing Structures and Construction of Three Dwellings for Older People or People with Disabilities

Plan Reference: Sheets 1 to 9

In detail: The proposed modification involves the north western balconies to be removed and the bedrooms to be made bigger with the proposed windows of these rooms made smaller than originally approved. An external awning will be affixed external over the windows.

The NSW Land and Environment Court via “*Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240*” has held that development consents can be modified to grant consent retrospectively to works that have already been carried out.

This assessment and determination has been made having regard to this legislative framework.



Building still under construction at No. 19 Moore Road, Freshwater

Relevant Background: DA2005/0894 was a Development Application for Demolition of an existing structures and construction of three dwellings for older people or people with disabilities.

The application was approved by Application Determination Panel (ADP) on 2 November 2006.

MOD2009/0116 was a Section 96(2) Modification to Consent 2005/0894 issued for a seniors living development to modify driveway levels, include plant room to basement level, reconfigure carparking, increase basement level ceiling height, add wheelchair platform lift, increase first floor ceiling height,



Warringah Council

delete voids from first floor, increase ridge height, delete parapet walls along roof, change roof from tiles to colorbond, and modify external finishes.

The application was approved by delegation on 4 August 2009.

Report Section	Applicable	Complete & Attached
Section 1 – Code Assessment	☒ Yes ☐ No	☒ Yes ☐ No
Section 2 – Issues Assessment	☐ Yes ☒ No	☐ Yes ☐ No
Section 3 – Site Inspection Analysis	☒ Yes ☐ No	☒ Yes ☐ No
Section 4 – Application Determination	☒ Yes ☐ No	☒ Yes ☐ No

SECTION 96(1a) EPA ACT 1979

Section 96(1A) (a) – Is the Modification to Consent of Minimal Environmental Impact?	☒ Yes ☐ No
Section 96(1A) (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?	☒ Yes ☐ No
Section 96(1A) (c) & (d) – Has the application been on Public Exhibition?	☒ Yes ☐ No ☐ N/A
Have you considered any submissions?	☐ Yes ☒ No ☐ N/A
Section 96 (3) – Have you considered such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application	☒ Yes ☐ No



Warringah Council

Estimated Cost of Works: \$ Nil

Are S94A Contributions Applicable?

☐ Yes ☒ No

Notification Required?

☒ Yes ☐ No

Period of Public Exhibition?

☒ 14 days ☐ 21 days ☐ 30 days ☐ N/A

Submissions Received?

☐ Yes ☒ No

No. of Submissions: Nil

Are any trees impacted upon by the proposed development? ☐ Yes ☒ No

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS

WLEP 2000

Locality: H1 Freshwater Beach

"The Freshwater Beach locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment buildings and a range of complementary and compatible uses."

Comment: The approved building (three dwellings for older people or people with disabilities) is two storeys in height and maintains consistency with the existing apartment buildings and detached style housing within Moore Road and the locality with landscaped settings.

"Future development will maintain the visual pattern and predominant scale of existing detached housing in the locality except for the Harbord Diggers Club. The streets will be characterised by landscaped front gardens and consistent from building setbacks."

Comment: The proposal will maintain the visual pattern and predominant scale of existing dwelling and residential flat buildings in the locality. The established landscaped elements within the front setback and consistent front building setback are in coming with the locality.

"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."

Comment: Not applicable

"The locality contains hillsides and elevated landforms, prominent coastal headlands and cliffs and remnant vegetation. These elements will be protected from development that would detract from their visual and natural qualities, presenting in some parts of the locality a constraint to further development. The Harbord Diggers Club will continue to cater for the recreational and leisure needs of the community. If the existing approved building and carparking areas are to be expanded, regard must be had to any approved and detailed masterplan for the site. Such a masterplan is to address issues such as views, visual impact, natural features, management of traffic and impact upon the amenity of the locality. The locality will continue to be served by the existing local retail centre shown on the map. Future development in this centre will be in accordance with the general principles of development control provided in clause 39."

Comment: Not applicable

Development Definition: ☐ Housing ☐ Ancillary Development to Housing

☒ Other (Housing for older people or people with a disability)

Category of Development: ☐ Category 1 ☒ Category 2 ☐ Category 3



Warringah Council

Draft WLEP 2009 Permissible or Prohibited Land use: Permissible

Desired Future Character:

☐ Category 1 Development with no variations to BFC's (Section 2 Assessment not required)
Is the development considered to be consistent with the Locality's Desired Future Character Statement? ☒ Yes ☐ No

☐ Category 1 Development with variations to BFC's (Section 2 Assessment Required)

☒ Category 2 Development Consistency Test (Section 2 Assessment Required)

☐ Category 3 Development Consistency Test (Section 2 Assessment Required)

Built Form Controls:	Approved DA2005/0894	Approved DA2005/0894	Proposed S96(1A)
Building Height (overall): Applicable: ☒ Yes ☐ No Requirement: ☒ 8.5m	☐ Existing and unchanged Proposed: 7.8m Complies: ☒ Yes ☐ No	☐ Existing and unchanged Proposed: 8.5m Complies: ☒ Yes ☐ No	☐ Existing and unchanged Proposed: 8.5m Complies: ☒ Yes ☐ No
Building Height (underside of upper most ceiling): Applicable: ☒ Yes ☐ No Requirement: ☒ 7.2m	☐ Existing and unchanged Proposed: 5.4m Complies: ☒ Yes ☒ No	☐ Existing and unchanged Proposed: 6.3m Complies: ☒ Yes ☒ No	☒ Existing and unchanged Proposed: 6.3m Complies: ☒ Yes ☐ No
Front Setback: Applicable: ☒ Yes ☐ No Requirement: ☒ 6.5m (Primary street frontage) Secondary Street Frontage: On blocks with double street frontage the front building setback may be	☐ Existing and unchanged Proposed: 6.5m Complies: ☒ Yes ☐ No Secondary Street Frontage: 4.4m to lift 6m to building	☐ Existing and unchanged Proposed: 6.5m (building) 5m to the proposed wheel chair platform lift (Clause 20 variation approved) Complies: ☐ Yes ☒ No Secondary Street Frontage: 4.4m to lift 6m to building	☐ Existing and unchanged Proposed: 6.5m Complies: ☒ Yes ☐ No Secondary Street Frontage: 4.4m to lift 6m to building



Warringah Council

reduced to a minimum of 3.5 metres for the secondary frontage, but secondary street setback variations must consider the character of the secondary street and the predominant setbacks existing to that street	Complies: ☒ Yes ☐ No	Complies: ☒ Yes ☐ No	Complies: ☒ Yes ☐ No
Housing Density: Applicable: ☐ Yes ☒ No Note: Not applicable subject to the provisions of Clause 29			
Landscape Open Space: Applicable: ☒ Yes ☐ No ☒ 40% (220.68m²)	☐ Existing and unchanged Proposed: 135m² or 25% Complies: ☐ Yes ☒ No Approved with a Clause 20 variation given to the application. Clause 29 of WLEP 2000 provides that an application for housing for older people or people with disabilities cannot be refused on the grounds of landscaped area where the landscaped area complies with the following: Clause 29 (2) (c) – “<i>Landscaped Area</i>” – 35m² of landscaped area per dwelling. In this regard, the proposal requires 105m² of landscaped area and provides 135m².	☐ Existing and unchanged Proposed: 135m² or 25% Complies: ☐ Yes ☒ No Approved with a Clause 20 variation given to the application. Clause 29 of WLEP 2000 provides that an application for housing for older people or people with disabilities cannot be refused on the grounds of landscaped area where the landscaped area complies with the following: Clause 29 (2) (c) – “<i>Landscaped Area</i>” – 35m² of landscaped area per dwelling. In this regard, the proposal requires 105m² of landscaped area and provides 135m².	☒ Existing and unchanged (135m² or 25%) Proposed: Complies: ☐ Yes ☐ No
Rear Setback: Applicable: ☐ Yes ☒ No Note: Not applicable due to dual street frontage			
Side Boundary Envelope: Applicable: ☒ Yes ☐ No Requirement:	Boundary: ☐ Nth ☐ Sth ☒ Est ☐ Wst ☐ Existing and unchanged	Boundary: ☐ Nth ☐ Sth ☒ Est ☐ Wst ☐ Existing and	Boundary: ☐ Nth ☐ Sth ☒ Est ☐ Wst ☐ Existing and



Warringah Council

☐ 4m / 45 degrees ☒ 5m / 45 degrees	or Fully within Envelope: ☒ Yes ☐ No Minor Breach: ☐ Yes ☐ No Complies: ☒ Yes ☐ No Boundary: ☐ Nth ☐ Sth ☐ Est ☒ Wst ☐ Existing and unchanged or Fully within Envelope: ☒ Yes ☐ No Minor Breach: ☐ Yes ☐ No Complies: ☒ Yes ☐ No	unchanged or Fully within Envelope: ☒ Yes ☐ No Minor Breach: ☐ Yes ☐ No Complies: ☒ Yes ☐ No Boundary: ☐ Nth ☐ Sth ☐ Est ☒ Wst ☐ Existing and unchanged or Fully within Envelope: ☒ Yes ☐ No Minor Breach: ☐ Yes ☐ No Complies: ☒ Yes ☐ No	unchanged or Fully within Envelope: ☒ Yes ☐ No Minor Breach: ☐ Yes ☐ No Complies: ☒ Yes ☐ No Boundary: ☐ Nth ☐ Sth ☐ Est ☒ Wst ☐ Existing and unchanged or Fully within Envelope: ☒ Yes ☐ No Minor Breach: ☐ Yes ☐ No Complies: ☒ Yes ☐ No
Side Setbacks: Applicable: ☒ Yes ☐ No ☒ 900mm	Proposed: Ground NW = 2m 1.3m to courtyards 1.8m to building Upper level NW = 2m 1.3m to balconies 1.8m to building Complies: ☒ Yes ☐ No	Proposed: Ground NW = 2m 1.3m to courtyards 1.8m to building Upper level NW = 2m 1.3m to balconies 1.8m to building Complies: ☒ Yes ☐ No	Proposed: Ground NW = 2m 1.3m to courtyards 1.8m to building Upper level NW = 2m 1.3m to balconies 1.8m to building Complies: ☒ Yes ☐ No

General Principles of Development Control:

CL38 Glare & reflections Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL39 Local retail centres Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No



Warringah Council

CL40 Housing for older people or people with disabilities

Comment: Clause 40 of WLEP 2000 provides that housing for older people or people with a disability with adequate access and compliance with the standard principles in Schedule 16.

It must be noted this General Principle requires consideration of the following:

- access to facilities (shops, bus stops, banks etc)
- access to services
- wheelchair access
- Schedule 16

With regards to this General Principle it must be noted that the proposed modification application seeks to alter internal layouts and external facades and finishes of the originally approved development.

The proposed changes to the internal layouts consist of the following:

- The proposed modification involves the north western balconies to be removed and the bedrooms to be made bigger with the proposed windows of these rooms made smaller than originally approved. An external awning will be affixed external over the windows.

It is noted that the original application determined that the proposal satisfied the requirements of this General Principle subject to conditions requiring compliance with the requirements of Schedule 16 of the WLEP 2000.

In this regard these conditions will still be in force should the modification application be approved, ensuring compliance with the requirements of this General Principle.

Accordingly, given the above consideration and the conditions imposed upon the original development application which will remain in force should this modification application be approved, it is considered that the proposal satisfies the requirements of this General Principle.

CL41 Brothels Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL42 Construction Sites Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL43 Noise Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL44 Pollutants Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL45 Hazardous Uses Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL46 Radiation Emission Levels Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No



Warringah Council

CL47 Flood Affected Land Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL48 Potentially Contaminated Land Applicable: ☒ Yes ☐ No	Complies: Based on the previous land uses if the site likely to be contaminated? ☐ Yes ☒ No Is the site suitable for the proposed land use? ☒ Yes ☐ No
CL49 Remediation of Contaminated Land Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL49a Acid Sulfate Soils Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL50 Safety & Security Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL51 Front Fences and Walls Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL53 Signs Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL54 Provision and Location of Utility Services Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL55 Site Consolidation in 'Medium Density Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL56 Retaining Unique Environmental Features on Site Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No



Warringah Council

CL57 Development on Sloping Land Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL58 Protection of Existing Flora Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL59 Koala Habitat Protection Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL60 Watercourses & Aquatic Habitats Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL61 Views Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL62 Access to sunlight Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL63 Landscaped Open Space Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL63A Rear Building Setback Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL64 Private open space Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL65 Privacy Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No Comment: The deletion of the balconies on the northwest elevation will improve privacy between the adjoining residential flat building at No. 17 Moore Road. Given the proposed rooms are bedrooms, a reduction in windows for this bedrooms and the separation between buildings, it is deemed that adequate privacy is maintained.
CL66 Building bulk Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No



Warringah Council

CL67 Roofs Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL68 Conservation of Energy and Water Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL69 Accessibility – Public and Semi-Public Buildings Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No Comment: The proposed development has been designed to allow for continuous access for older people or people with a disability through the development. The modification will not alter the existing access provisions.
CL70 Site facilities Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL71 Parking facilities (visual impact) Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL72 Traffic access & safety Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL73 On-site Loading and Unloading Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL74 Provision of Carparking Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
CL75 Design of Carparking Areas Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL76 Management of Stormwater Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL77 Landfill Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No



Warringah Council

CL78 Erosion & Sedimentation Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL79 Heritage Control Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL81 Notice to Heritage Council Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL82 Development in the Vicinity of Heritage Items Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
CL83 Development of Known or Potential Archaeological Sites Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No

Schedules:

Schedule 5 State policies Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 6 Preservation of bushland Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 7 Matters for consideration in a subdivision of land Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 8 Site analysis Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No



Warringah Council

Schedule 9 Notification requirements for remediation work Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 10 Traffic generating development Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 11 Koala feed tree species and plans of management Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 12 Requirements for complying development Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 14 Guiding principles for development near Middle Harbour Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No
Schedule 15 Statement of environmental effects Applicable: ☐ Yes ☒ No	Complies: ☐ Yes ☐ Yes , subject to condition ☐ No

Schedule 16

The following is an assessment of the requirements outlined under Schedule 16 of WLEP 2000 that have been affected by the proposed modifications to the application.

Control	Required	Proposed	Compliance
21. Neighbourhood amenity and streetscape	a. Contribute to an attractive residential environment with clear character and identity.	The proposed development is considered to satisfactorily compliment the residential character of the locality, despite changes to the external presentation of the building.	YES
	b. Where possible, retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan,	The site is not in close proximity to any heritage items or conservation areas and is therefore considered satisfactory in this regard.	YES
	c. Where possible, maintain reasonable neighbour amenity	Originally approved building setbacks unchanged by this	YES



Warringah Council

Control	Required	Proposed	Compliance
	and appropriate residential character by providing building setbacks that progressively increase as wall heights increase to reduce bulk and overshadowing,	modification application.	
	d. Where possible, maintain reasonable neighbour amenity and appropriate residential character by using building form and siting that relates to the site's land form,	Originally approved building position on the slope unchanged by this modification application.	YES
	e. Where possible, maintain reasonable neighbour amenity and appropriate residential character by adopting building heights at the street frontage that are compatible in scale with adjacent development,	Modified approved building position on the slope unchanged by this modification application.	YES
	f. Where possible, maintain reasonable neighbour amenity and appropriate residential character by considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours,	Originally approved building setbacks and landscaping unchanged by this modification application.	YES
	g. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	Originally approved building setbacks unchanged by this modification application.	YES
	h. Embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	Originally approved landscaping unchanged by this modification application.	YES

Schedule 17 Carparking provision Applicable: ☒ Yes ☐ No	Complies: ☒ Yes ☐ Yes , subject to condition ☐ No
--	---

Other Relevant Environmental Planning Instruments:

SEPPs: Applicable? ☒ Yes ☐ No

SEPP Basix: Applicable?

☐ Yes ☒ No

If yes: Has the applicant provided Basix Certification?

☐ Yes ☐ No

SEPP 55 Applicable?

☒ Yes ☐ No

Based on the previous land uses if the site likely to be contaminated?

☐ Yes ☒ No



Warringah Council

Is the site suitable for the proposed land use?

☒ Yes ☐ No

SEPP Infrastructure

Applicable?

☒ Yes ☐ No

Is the proposal for a swimming pool:

Within 30m of an overhead line support structure?

☐ Yes ☒ No

Within 5m of an overhead power line ?

☐ Yes ☒ No

Does the proposal comply with the SEPP?

☒ Yes ☐ No

SEPP (HSPD) 2004: S96 (1A) Modifications maintain consistency with SEPP Provisions.

REPs: Applicable?: ☐ Yes ☒ No

EPA Regulation Considerations:

Clause 54 & 109 (Stop the Clock) Applicable: ☐ Yes ☒ No	
Clause 92 (Demolition of Structures) Applicable: ☐ Yes ☒ No	Addressed via condition? ☐ Yes ☐ No
Clause 92 (Government Coastal Policy) Applicable: ☐ Yes ☒ No	Is the proposal consistent with the Goal and Objectives of the Government Coastal Policy ? ☐ Yes ☐ No
Clause 93 & 94 (Fire Safety) Applicable: ☒ Yes ☐ No	Addressed via condition? ☒ Yes ☐ No
Clause 94 (Upgrade of Building for Disability Access) Applicable: ☒ Yes ☐ No	Addressed via condition? ☒ Yes ☐ No
Clause 98 (BCA) Applicable: ☒ Yes ☐ No	Addressed via condition? ☒ Yes ☐ No



Warringah Council

REFERRALS

Referral Body/Officer

Development Engineering

Required

☐ Yes ☒ No

Response

☐ Satisfactory

☐ Satisfactory, subject to condition

☐ Unsatisfactory

Landscape Assessment

☐ Yes ☒ No

☐ Satisfactory

☐ Satisfactory, subject to condition

☐ Unsatisfactory

Bushland Management

☐ Yes ☒ No

☐ Satisfactory

☐ Satisfactory, subject to condition

☐ Unsatisfactory

Catchment Management

☐ Yes ☒ No

☐ Satisfactory

☐ Satisfactory, subject to condition

☐ Unsatisfactory

Aboriginal Heritage

☐ Yes ☒ No

☐ Satisfactory

☐ Satisfactory, subject to condition

☐ Unsatisfactory

Env. Health and Protection

☐ Yes ☒ No

☐ Satisfactory

☐ Satisfactory, subject to condition

☐ Unsatisfactory

NSW Rural Fire Service

☐ Yes ☒ No

☐ Satisfactory

☐ Satisfactory, subject to condition

☐ Unsatisfactory

Energy Australia

☒ Yes ☐ No

☒ Satisfactory

☐ Satisfactory, subject to condition

☐ Unsatisfactory

Applicable Legislation/ EPI's /Policies:

- | | |
|---|--|
| ☒ EPA Act 1979
☒ EPA Regulations 2000
☒ Disability Discrimination Act 1992
☐ Local Government Act 1993
☐ Roads Act 1993
☐ Rural Fires Act 1997
☐ RFI Act 1948
☐ Water Management Act 2000
☐ Water Act 1912
☐ Swimming Pools Act 1992; | ☒ SEPP No. 55 – Remediation of Land
☐ SEPP No. 71 – Coastal Protection
☐ SEPP BASIX
☒ SEPP Infrastructure
☒ WLEP 2000
☒ WDCP
☐ S94 Development Contributions Plan
☒ S94A Development Contributions Plan
☐ NSW Coastal Policy (cl 92 EPA Regulation)
☒ Other (Draft WLEP 2009) |
|---|--|

SECTION 79C EPA ACT 1979

Section 79C (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	☒ Yes ☐ No
Section 79C (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	☒ Yes ☐ No
Section 79C (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	☒ Yes ☐ No
Section 79C (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	☐ Yes ☐ No ☒ N/A
Section 79C (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	☒ Yes ☐ No
Section 79C (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	☒ Yes ☐ No
Section 79C (1) (c) – Is the site suitable for the development?	☒ Yes ☐ No
Section 79C (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	☒ Yes ☐ No
Section 79C (1) (e) – Is the proposal in the public interest?	☒ Yes ☐ No

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: Senior Housing: means residential accommodation that consists of:

- (a) a residential care facility, or
- (b) a hostel, or
- (c) a group of self-contained dwellings, or
- (d) a combination of these, and that is, or is intended to be, used permanently for:
- (e) seniors or people who have a disability, or
- (f) people who live in the same household with seniors or people who have a disability, or
- (g) staff employed to assist in the administration of the residential accommodation or in the provision of services to persons living in the accommodation, but does not include a hospital.

Land Use Zone: R2 Low Density Residential

Permissible or Prohibited: Permissible – CL 5 of SEPP (Housing for Seniors or People with a Disability) 2004.

Additional Permitted used for particular land – Refer to Schedule 1: Not applicable

Principal Development Standards: Not applicable

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Height of Buildings:	8.5m	8.5m	Yes	Not Applicable

The proposed development is consistent with the aims and objectives of the Draft WLEP 2009.

SECTION 3 – SITE INSPECTION ANALYSIS



Site area 551.7sqm

Detail existing onsite structures:

- ☐ None
☒ Dwellings
☐ Detached Garage
☐ Detached shed
☐ Swimming pool
☐ Tennis Court
☐ Cabana
☐ Other

Site Features:

- ☐ None
☒ Trees
☒ Under Storey Vegetation
☐ Rock Outcrops
☐ Caves
☐ Overhangs
☐ Waterfalls

Bushfire Prone?

- ☐ Yes ☒ No

Flood Prone?

- ☐ Yes ☒ No

Affected by Acid Sulfate Soils

- ☐ Yes ☒ No

Located within 40m of any natural watercourse?

- ☐ Yes ☒ No

Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?

- ☐ Yes ☒ No

- ☐ Creeks / Watercourse
☐ Aboriginal Art / Carvings
☐ Any Item of / or any potential item of heritage significance

Potential View Loss as a result of development

- ☐ Yes ☒ No

If Yes where from (in relation to site):

- ☐ North / South
☐ East / West
☐ North East / South West
☐ North West / South East

View of:

- Ocean / Waterways ☐ Yes ☒ No
 Headland ☐ Yes ☒ No
 District Views ☐ Yes ☒ No
 Bushland ☐ Yes ☒ No
 Other:

Located within 100m of the mean high watermark?

- ☐ Yes ☒ No

Located within an area identified as a Wave Impact Zone?

- ☐ Yes ☒ No

Any items of heritage significance located upon it?

- ☐ Yes ☒ No

Located within the vicinity of any items of heritage significance?

- ☐ Yes ☒ No

Located within an area identified as potential land slip?

- ☐ Yes ☒ No

Is the development Integrated?



Warringah Council

☐ Yes ☒ No

Does the development require concurrence?

☐ Yes ☒ No

Is the site owned or is the DA made by the "Crown"?

☐ Yes ☒ No

Have you reviewed the DP and s88B instrument?

☒ Yes ☐ No

Does the proposal impact upon any easements / Rights of Way?

☐ Yes ☒ No

Site Inspection / Desktop Assessment Undertaken by:

Does the site inspection
<Section 3> confirm the
assessment undertaken against
the relevant EPI's <Section's 1 &
2>?

☒ Yes ☐ No

Are there any additional matters
that have arisen from your site
inspection that would require
any additional assessment to be
undertaken?

☐ Yes ☒ No

If yes provide detail:

Signed

Date 10 August 2010

Phil Lane, Senior Development Assessment Officer

SECTION 4 – APPLICATION DETERMINATION

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 96(1A) and Section 79C of the Environmental Planning and Assessment Act 1979, Warringah Local Environmental Plan 2000, Warringah Development Control Plan and the relevant 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 does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to any conditions contained within the Recommendation.

The proposed modification seeks consent for involves the north western balconies to be removed and the bedrooms to be made bigger with the proposed windows of these rooms made smaller than originally approved. An external awning will be affixed external over the windows.

The NSW Land and Environment Court via "*Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240*" has held that development consents can be modified to grant consent retrospectively to works that have already been carried out.

This assessment and determination has been made having regard to this legislative framework.

After viewing the buildings under construction, the proposed location of the bedrooms and the windows it is deemed that the proposed modification can be supported. Accordingly, it is recommended that the application be determined by way of approval, subject to the following:

Condition No. 1 is to be modified to read as follows:

1. Approved Plans and Supporting Documentation

The development is to be carried out in compliance with the following plans and documentation listed below and endorsed with Council's stamp:

1.1 Drawing Number	1.2 Drawing Title	1.3 Revision Date
Architecturals: Prepared by Paul Blair Architecture		
A02 Rev C	Site Plan	August 2006
A03 Rev C	Basement Plan	August 2006
A04 Rev C	Ground Floor Plan	August 2006
A05 Rev C	First Floor Plan	August 2006



Warringah Council

A06 Rev C	Roof Plan	August 2006
A07 Rev C	North East & South East Elevations	August 2006
A08 Rev C	North West & South West Elevations	August 2006
A09 Rev C	Section 1 & 2	August 2006
Landscape Plans: Prepared by Paul Blair Architecture		
LA01 Rev B	Ground Floor Landscaping Plan	August 2006
LS02 Rev B	First	August 2006

Except where modified by the following plans to modify driveway levels, include plant room to basement level, reconfigure carparking, increase basement level ceiling height, add wheelchair platform lift, increase first floor ceiling height, delete voids from first floor, increase ridge height, delete parapet walls along roof, change roof from tiles to colorbond, and modify external finishes.

Drawing Number	Dated	Prepared By
TS_9002 Sheet 1	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 2	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 3	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 4	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 5	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 6	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 7	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 8	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 9	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 13	12/03/09	Anthony Sweeney Architectural Design and Plan Service

Except where modified by the following plans to remove the north western balconies on the first floor and the bedrooms to be made bigger with the proposed windows of these rooms made smaller than originally approved. An external awning will be affixed external over these bedroom windows.

Drawing Number	Dated	Prepared By
TS_9002 Sheet 1	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 2	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 3	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 4	09/09/09	Anthony Sweeney Architectural Design and



Warringah Council

		Plan Service
TS_9002 Sheet 5	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 6	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 7	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 8	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 9	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 13	09/09/09	Anthony Sweeney Architectural Design and Plan Service

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Note: Further information on Construction Certificates can be obtained by contacting Council's Call Centre on 9942 2111, Council's website or at the Planning and Assessment Counter.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. **[A1 (1)]**

It is considered that the proposed modification application (as amended) satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the proposal is recommended for approval.

RECOMMENDATION (SECTION 96 (1A) APPROVAL)

That Modification Application: MOD2010/0148 which seeks consent to modify, DA2005/0894 for "Demolition of an existing Structures and Construction of Three Dwellings for Older People or People with Disabilities" on land at Lot B, DP 365792, No.19 Moore Road, Freshwater be approved in accordance with the following:

Condition No. 1 is to be modified to read as follows:

1. Approved Plans and Supporting Documentation

The development is to be carried out in compliance with the following plans and documentation listed below and endorsed with Council's stamp:

1.4 Drawing Number	1.5 Drawing Title	1.6 Revision Date
Architecturals: Prepared by Paul Blair Architecture		
A02 Rev C	Site Plan	August 2006
A03 Rev C	Basement Plan	August 2006
A04 Rev C	Ground Floor Plan	August 2006
A05 Rev C	First Floor Plan	August 2006
A06 Rev C	Roof Plan	August 2006
A07 Rev C	North East & South East Elevations	August 2006
A08 Rev C	North West & South West Elevations	August 2006
A09 Rev C	Section 1 & 2	August 2006
Landscape Plans: Prepared by Paul Blair Architecture		
LA01 Rev B	Ground Floor Landscaping Plan	August 2006



Warringah Council

LS02 Rev B	First	August 2006
------------	-------	-------------

Except where modified by the following plans to modify driveway levels, include plant room to basement level, reconfigure carparking, increase basement level ceiling height, add wheelchair platform lift, increase first floor ceiling height, delete voids from first floor, increase ridge height, delete parapet walls along roof, change roof from tiles to colorbond, and modify external finishes.

Drawing Number	Dated	Prepared By
TS_9002 Sheet 1	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 2	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 3	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 4	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 5	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 6	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 7	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 8	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 9	12/03/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 13	12/03/09	Anthony Sweeney Architectural Design and Plan Service

Except where modified by the following plans to remove the north western balconies on the first floor and the bedrooms to be made bigger with the proposed windows of these rooms made smaller than originally approved. An external awning will be affixed external over these bedroom windows.

Drawing Number	Dated	Prepared By
TS_9002 Sheet 1	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 2	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 3	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 4	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 5	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 6	09/09/09	Anthony Sweeney Architectural Design and



Warringah Council

		Plan Service
TS_9002 Sheet 7	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 8	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 9	09/09/09	Anthony Sweeney Architectural Design and Plan Service
TS_9002 Sheet 13	09/09/09	Anthony Sweeney Architectural Design and Plan Service

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Note: Further information on Construction Certificates can be obtained by contacting Council's Call Centre on 9942 2111, Council's website or at the Planning and Assessment Counter.

Reason: *To ensure the work is carried out in accordance with the determination of Council and approved plans. [A1 (1)]*

"I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest"

CoSign Digital Signature

Date 10 August 2010

Phil Lane, Senior Development Assessment Officer

The application is determined under the delegated authority of:

CoSign Digital Signature

Date 10 August 2010

Rodney Piggott, Team Leader, Development Assessment