

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2015/0211 |
|----------------------------|-------------|

|                                           |                                                        |
|-------------------------------------------|--------------------------------------------------------|
| <b>Responsible Officer:</b>               | David Auster                                           |
| <b>Land to be developed (Address):</b>    | Lot 55 DP 5396 , 19 Wyndora Avenue FRESHWATER NSW 2096 |
| <b>Proposed Development:</b>              | Alterations and additions to existing dwelling house   |
| <b>Zoning:</b>                            | LEP - Land zoned R2 Low Density Residential            |
| <b>Development Permissible:</b>           | Yes                                                    |
| <b>Existing Use Rights:</b>               | No                                                     |
| <b>Consent Authority:</b>                 | Warringah Council                                      |
| <b>Land and Environment Court Action:</b> | No                                                     |
| <b>Owner:</b>                             | James Christian Gulbin<br>Donna Louise Gulbin          |
| <b>Applicant:</b>                         | James Christian Gulbin                                 |

|                                  |                                               |
|----------------------------------|-----------------------------------------------|
| <b>Application lodged:</b>       | 18/03/2015                                    |
| <b>Application Type:</b>         | Local                                         |
| <b>State Reporting Category:</b> | Residential - Alterations and additions       |
| <b>Notified:</b>                 | 31/03/2015 to 15/04/2015                      |
| <b>Advertised:</b>               | Not Advertised in accordance with A.7 of WDCP |
| <b>Submissions:</b>              | 0                                             |
| <b>Recommendation:</b>           | Approval                                      |

|                                 |            |
|---------------------------------|------------|
| <b>Estimated Cost of Works:</b> | \$ 132,600 |
|---------------------------------|------------|

### 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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - B1 Wall Heights

Warringah Development Control Plan - B3 Side Boundary Envelope

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

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 55 DP 5396 , 19 Wyndora Avenue FRESHWATER NSW 2096                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Detailed Site Description:</b> | <p>The site is a regular shaped allotment on the northern side of Wyndora Avenue. It has 10.06 metre front (south) and rear (north) boundaries and 40.235 metre side (east and west) boundaries. The site area is 404.8 sq metres. The site slopes down from front front to rear, getting steeper towards the rear.</p> <p>There is currently a two storey dwelling on site with an attached carport. Surrounding development consists of one and two storey dwellings.</p> |

Map:



## SITE HISTORY

**DA2010/1119** - Alterations and Additions - Construction of a carport and driveway

**DA1999/2784** - Alterations to Existing Building

**MOD1999/2784/1** - Modification 1 - Alterations & Additions (NO External Changes to Roof Cladding Windows Only Changes to Internal Layout & Omission of Internal Stair to Be Done in the Future)

## PROPOSED DEVELOPMENT IN DETAIL

It is proposed to construct a new upper level addition at the rear of the existing residence. The upper level addition will contain an attic style master bedroom suite comprising a bedroom, walk-through-wardrobe and ensuite bathroom and stairwell with a small open balcony at the rear northern end of the bedroom.

The addition will be predominantly contained within the exiting pitched roof space with only a partial break-out required beyond the existing pitched roof forms.

Apart from some minor internal changes to accommodate a new internal upper level access stair the existing residence including the upper level rear balcony, lower level rear patio and open front verandah with attached carport is retained without change except for the removal of an existing rear living area eastern window to provide increased privacy.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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                                             | See discussion on “Environmental Planning Instruments” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Section 79C (1) (a)(iii) – Provisions of any development control plan                                                    | Warringah Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Section 79C (1) (a)(iiia) – Provisions of any planning agreement                                                         | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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 of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed</p> |

| Section 79C 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                   | via a condition of consent.<br><br>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.                                                                                                                                                                                                               |
| Section 79C (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) 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.<br>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.<br>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. |
| Section 79C (1) (c) – the suitability of the site for the development                                                                                                             | The site is considered suitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs                                                                                             | See discussion on “Public Exhibition” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Section 79C (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.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

| External Referral Body | Comments                                                                                                                                    |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no |

| External Referral Body | Comments                                                 |
|------------------------|----------------------------------------------------------|
|                        | objections are raised and no conditions are 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

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A211618). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

### SEPP (Infrastructure) 2007

#### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting

an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

**Warringah Local Environment 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

| Standard             | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 9.4m     | 9.6%        | No       |

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                 | No<br>(see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards | Yes                                       |
| Part 6 Additional Local Provisions      | Yes                                       |
| 6.4 Development on sloping land         | Yes                                       |

Detailed Assessment

**4.6 Exceptions to development standards**

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

|                                                             |      |
|-------------------------------------------------------------|------|
| Requirement:                                                | 8.5m |
| Proposed:                                                   | 9.4m |
| Is the planning control in question a development standard? | YES  |

|                                                                                                        |           |
|--------------------------------------------------------------------------------------------------------|-----------|
| Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation? | Numerical |
| If numerical enter a % variation to requirement                                                        | 9.6%      |

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

#### Comment:

The proposed non-compliant addition is to the rear of the existing dwelling, and will not be readily visible or identifiable as a non-compliant element from the surrounding area. Given the slope of the land, there are various heights and levels of development in the area, and the development will not cause the dwelling to become incompatible with the height and scale of surrounding and nearby development.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

#### Comment:

No submissions were received as a result of the notification of the application, and no unreasonable impacts were identified on site, including on views, privacy solar access or visual impact.

*c) to minimise adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*

#### Comment:

The proposal will not have any unreasonable impacts on the scenic quality of Warringah’s coastal and bush environments. The alterations and additions to an existing dwelling will blend in with the surrounding development, and the non-compliance will not be readily identifiable given the slope of the land towards the rear of the site.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The proposal will not have any unreasonable visual impacts on public places such as parks and reserves, roads and community facilities. From the road it will be perceived as a first floor addition (due to the slope at the rear of the site), and from areas to the north it will blend into the surrounding development which is spread up and down the hill.

**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 zone.

The underlying objectives of the R2 Low Density Residential zone:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The development will remain a single detached dwelling, providing housing in a low density environment.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal will not prevent other land uses from taking place in the area.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposed alterations and additions are entirely above the existing building footprint, and will not alter the landscaping on site.

It is considered that the development satisfies this objective.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

(1) The objectives of this clause are as follows:

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

The proposal is to be built above the existing dwelling, where the land slopes down towards the rear of the site. These two factors both contribute to creating the non-compliance. However the non-compliance does not create any unreasonable impacts on the surrounding area or neighbouring properties, and the location of the upper level addition will allow the development to take best advantage of the views available to the north.

A degree of flexibility is therefore considered acceptable in the circumstances, and will provide for a better outcome for the development.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

The applicants have provided a statement under Clause 4.6 as part of the Statement of Environmental Effects. The statement adequately justifies the breach on planning grounds.

(4) Development consent must not be granted for development that contravenes a development standard unless:

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment:

The applicant's written request has adequately justified the breach on planning grounds, and

is considered to adequately address the matters in subclause (3).

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 zone in the WLEP 2011.

*(b) the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard is assumed.

## Warringah Development Control Plan

### Built Form Controls

| Built Form Control                                  | Requirement | Proposed                     | % Variation* | Complies |
|-----------------------------------------------------|-------------|------------------------------|--------------|----------|
| B1 Wall height                                      | 7.2m        | 8m                           | 10%          | No       |
| B3 Side Boundary Envelope                           | 5m          | East breach up to 800mm      | N/A          | No       |
|                                                     |             | West no breach               | N/A          | Yes      |
| B5 Side Boundary Setbacks                           | 0.9m        | East 2.1m                    | N/A          | Yes      |
|                                                     |             | West 2.6m                    | N/A          | Yes      |
| B7 Front Boundary Setbacks                          | 6.5m        | 20.2m                        | N/A          | Yes      |
| B9 Rear Boundary Setbacks                           | 6m          | 11.4m                        | N/A          | Yes      |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40%         | 29.5% existing and unchanged | N/A          | Yes      |

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

### Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--------|------------------------------|-----------------------------|
|        |                              |                             |

| Clause                                           | Compliance with Requirements | Consistency Aims/Objectives |
|--------------------------------------------------|------------------------------|-----------------------------|
| Part A Introduction                              | Yes                          | Yes                         |
| A.5 Objectives                                   | Yes                          | Yes                         |
| Part B Built Form Controls                       | Yes                          | Yes                         |
| B1 Wall Heights                                  | No                           | Yes                         |
| B3 Side Boundary Envelope                        | No                           | Yes                         |
| R2 Side Boundary Envelope Exceptions             | Yes                          | Yes                         |
| B5 Side Boundary Setbacks                        | Yes                          | Yes                         |
| Side Setbacks - R2                               | Yes                          | Yes                         |
| Side Setback Exceptions - R2                     | Yes                          | Yes                         |
| B7 Front Boundary Setbacks                       | Yes                          | Yes                         |
| Front Boundary Setbacks - R2                     | Yes                          | Yes                         |
| R2 - All other land in R2 Zone                   | Yes                          | Yes                         |
| B9 Rear Boundary Setbacks                        | Yes                          | Yes                         |
| Rear Boundary Setbacks - R2                      | Yes                          | Yes                         |
| All other land under R2                          | Yes                          | Yes                         |
| Part C Siting Factors                            | Yes                          | Yes                         |
| C4 Stormwater                                    | Yes                          | Yes                         |
| C5 Erosion and Sedimentation                     | Yes                          | Yes                         |
| C8 Demolition and Construction                   | Yes                          | Yes                         |
| C9 Waste Management                              | Yes                          | Yes                         |
| Residential accommodation - one or two dwellings | Yes                          | Yes                         |
| Part D Design                                    | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting    | No                           | 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                         |
| D12 Glare and Reflection                         | Yes                          | Yes                         |
| D14 Site Facilities                              | Yes                          | Yes                         |
| D20 Safety and Security                          | Yes                          | Yes                         |
| Part E The Natural Environment                   | Yes                          | Yes                         |
| E1 Private Property Tree Management              | Yes                          | Yes                         |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--------|------------------------------|-----------------------------|
|        | Yes                          | Yes                         |

## Detailed Assessment

### **B1 Wall Heights**

#### Description of non-compliance

The proposed wall height of the addition is up to 8m high. The control does not relate to habitable areas located wholly within a roof space, which the proposed addition partially qualifies as. However, the addition includes a side wall on one side, and in this case is considered as being non-compliant with this control.

#### Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

#### Comment:

The proposed addition will not be highly visible from Wyndora Avenue, being situated towards the rear of the existing dwelling. It is not considered to have any significant visual impacts on the public domain, including Wyndora Avenue, the footpath to the east, or from surrounding properties.

- *To ensure development is generally beneath the existing tree canopy level*

#### Comment:

The development will remain generally beneath the tree canopy level.

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

#### Comment:

No submissions were received, and no unreasonable view loss has been identified due to the proposal.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The proposal will not have any unreasonable impacts on neighbouring properties. Solar access, privacy and general amenity will all be reasonably maintained.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The non-compliance occurs in part due to the steeper slope towards the rear of the property. It is an upper level addition and will not require any excavation. The design is well integrated into the existing dwelling, and despite the non-compliance is considered to be responsive to the topography.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposal is designed to integrate with the existing roof design, and achieves this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B3 Side Boundary Envelope**

Description of non-compliance

The proposed addition will breach the envelope on the eastern side by up to 800mm.

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 that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed additions are to the rear of the property, where the slope of the land increases in steepness, and will not be highly visible from the public domain. The design is integrated into the roof of the dwelling, and will not unreasonably increase bulk and scale. It will not visually dominate the area by virtue of increased height and bulk.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The proposal is not considered to result in any unreasonable impacts to light, solar access and privacy. The non-compliant addition will remain well separated from adjoining buildings.

- *To ensure that development responds to the topography of the site.*

Comment:

The non-compliance is caused in part by the topography of the site, which becomes increasingly steep towards the rear of the property. The addition is to the existing dwelling, and is integrated into the roof design. It will provide a step back from northern end of the existing roof, and is sufficiently responsive to the topography.

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 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**

The existing development has a landscaped open space of approximately 29.5%. The proposal is built entirely above the existing building footprint, and will not alter the landscaped open space on site in any way. The proposal is therefore considered acceptable with regard to this control.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect 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**

### **Warringah Section 94A Development Contribution Plan**

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

|                                                     |  |
|-----------------------------------------------------|--|
| Warringah Section 94 Development Contributions Plan |  |
|-----------------------------------------------------|--|

| Contribution based on a total development cost of \$ 132,600 |                  |                |
|--------------------------------------------------------------|------------------|----------------|
| <b>Contributions</b>                                         | <b>Levy Rate</b> | <b>Payable</b> |
| Total Section 94A Levy                                       | 0.45%            | \$ 597         |
| Section 94A Planning and Administration                      | 0.05%            | \$ 66          |
| Total                                                        | 0.5%             | \$ 663         |

## 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 Development Consent to DA2015/0211 for Alterations and additions to existing dwelling house on land at Lot 55 DP 5396, 19 Wyndora Avenue, FRESHWATER, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

| <b>Architectural Plans - Endorsed with Council's stamp</b> |              |                    |
|------------------------------------------------------------|--------------|--------------------|
| <b>Drawing No.</b>                                         | <b>Dated</b> | <b>Prepared By</b> |
| 2015-01 Issue A                                            | 10/02/2015   | Context Design     |
| 2015-02 Issue A                                            | 10/02/2015   | Context Design     |
| 2015-03 Issue A                                            | 10/02/2015   | Context Design     |
| 2015-04 Issue A                                            | 10/02/2015   | Context Design     |
| 2015-05 Issue A                                            | 10/02/2015   | Context Design     |
| 2015-06 Issue A                                            | 10/02/2015   | Context Design     |
| 2015-07 Issue A                                            | 10/02/2015   | Context Design     |
| 2015-08 Issue A                                            | 10/02/2015   | Context Design     |
| 2015-SW01 Issue A                                          | 10/02/2015   | Context Design     |

| <b>Reports / Documentation – All recommendations and requirements contained within:</b> |                    |                          |
|-----------------------------------------------------------------------------------------|--------------------|--------------------------|
| <b>Report No. / Page No. / Section No.</b>                                              | <b>Dated</b>       | <b>Prepared By</b>       |
| Preliminary Geotechnical Assessment                                                     | 24th February 2015 | White Geotechnical Group |

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

d) The development is to be undertaken generally in accordance with the following:

| <b>Waste Management Plan</b> |              |                    |
|------------------------------|--------------|--------------------|
| <b>Drawing No.</b>           | <b>Dated</b> | <b>Prepared By</b> |
| 2015-WM01 Issue A            | 10/02/2015   | Context Design     |

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

approved plans. (DACPLB01)

## 2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land

being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

### 3. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(g) The applicant shall bear the cost of all works associated with the development that occurs on

Council's property.

(h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(l) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(m) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992

- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

(n) New solid fuel burning heaters or existing solid fuel heaters affected by building works must comply with the following:

- (1) AS 2918:2001 Domestic Solid Fuel Burning Appliances – Installation.
- (2) AS 4013:2014 Domestic Solid Fuel Burning Appliances – Method of Determination of Flue Gas Emissions.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Policy Controls**

Warragah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

| Warragah Section 94 Development Contributions Plan           |           |         |
|--------------------------------------------------------------|-----------|---------|
| Contribution based on a total development cost of \$ 132,600 |           |         |
| Contributions                                                | Levy Rate | Payable |
| Total Section 94A Levy                                       | 0.45%     | \$ 597  |
| Section 94A Planning and Administration                      | 0.05%     | \$ 66   |
| Total                                                        | 0.5%      | \$ 663  |

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

Reason: To provide for contributions in accordance with the Warragah Section 94A

Development Contributions Plan 2012.

5. **Bonds**

(a) Security Bond

A bond (determined from cost of works) of \$1000 and an inspection fee in accordance with Councils Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection)

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.warringah.nsw.gov.au/your-council/forms](http://www.warringah.nsw.gov.au/your-council/forms)).

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures\*\*
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting\*\*
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*
- (e) AS 4970 - 2009 'Protection of trees on development sites'\*\*

\*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [http://www.humanrights.gov.au/disability\\_rights/buildings/good.htm](http://www.humanrights.gov.au/disability_rights/buildings/good.htm)

\*\*Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

7. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar

reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

8. **Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

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

**Signed**

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**David Auster, Planner**

The application is determined under the delegated authority of:

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**Phil Lane, Development Assessment Manager**

## ATTACHMENT A

| Notification Plan                                                                             | Title              | Date       |
|-----------------------------------------------------------------------------------------------|--------------------|------------|
|  2015/080262 | plans notification | 19/03/2015 |

## ATTACHMENT B

| Notification Document                                                                         | Title            | Date       |
|-----------------------------------------------------------------------------------------------|------------------|------------|
|  2015/090719 | Notification map | 31/03/2015 |

## ATTACHMENT C

| Reference Number                                                                                | Document                                                                                    | Date       |
|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|------------|
|  2015/080270   | report statement of environmental effects                                                   | 28/02/2015 |
|  DA2015/0211   | 19 Wyndora Avenue FRESHWATER NSW 2096 - Development Application - Alterations and Additions | 18/03/2015 |
|  2015/078268   | DA Acknowledgement Letter - James Christian Gulbin                                          | 18/03/2015 |
|  2015/080253   | development application form                                                                | 19/03/2015 |
|  2015/080255   | applicant details                                                                           | 19/03/2015 |
|  2015/080258   | cost summary report                                                                         | 19/03/2015 |
|  2015/080259   | plan - survey                                                                               | 19/03/2015 |
|  2015/080262   | plans notification                                                                          | 19/03/2015 |
|  2015/080263   | plans - external                                                                            | 19/03/2015 |
|  2015/080264   | plans - internal                                                                            | 19/03/2015 |
|  2015/080266   | certification of shadow diagrams with plans                                                 | 19/03/2015 |
|  2015/080267  | report BASIX certificate                                                                    | 19/03/2015 |
|  2015/080269 | report preliminary geotechnical assessment                                                  | 19/03/2015 |
|  2015/080271 | plans - master set                                                                          | 19/03/2015 |
|  2015/089908 | File Cover                                                                                  | 30/03/2015 |
|  2015/089916 | Referral to AUSGRID - SEPP - Infrastructure 2007                                            | 30/03/2015 |
|  2015/090717 | Notification letter 9                                                                       | 31/03/2015 |
|  2015/090719 | Notification map                                                                            | 31/03/2015 |
|  2015/113194 | working plans                                                                               | 22/04/2015 |