

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0271
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 15 DP 241344, 30 Lyly Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Modification of consent to DA2016/0117 granted for construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Irwin Ka Pui Wan
Applicant:	Markanne Pty Ltd
Application lodged:	31/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	06/06/2018 to 22/06/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope

SITE DESCRIPTION

Property Description:	Lot 15 DP 241344 , 30 Lyly Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The site comprises Lot 15, Section 183, DP 241344, 30 Lyly Road, Allambie Heights. It is located on the western side of Lyly Road to the north of the intersection with Allambie Heights Road. The site is rectangular in shape, with a frontage of 15.415m to Lyly Road to the east, a northern side boundary of 37.22m, a southern side boundary of 39.26m, and a western rear boundary of 18.555m. The site area is 707.3m². The site slopes steeply from the south-western corner down to the north-eastern corner. The total fall is approximately 18m, representing a slope of 41.9%. The site is currently under construction via the original Development Application approval (DA2016/0177 - Construction of a dwelling house). The site contains a number of exposed rock outcrops.

Map:



SITE HISTORY

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

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

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

DA2015/0688 - Construction of a dwelling house and garage - Withdrawn

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

DA2016/0177 - Construction of a dwelling house approved 19 July 2016

PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications are as follows (submitted by the applicant): -

"GROUND FLOOR – A101A

- Driveway has been amended to provide complying turning area to comply with Australian Standards (Previous driveway design was not capable of complying).
- Excavation and construction for an entry shaft to connect new pedestrian lift to garage level.

- *Car-turntable added for improved maneuverability*

FIRST FLOOR – A102A

- *Office marginally increased in size*
- *Entry stair configuration changed to end at front door*
- *First Floor – Second Floor stair configuration changed, resulting in a minor increase in floor area. Minor increase offset by a minor decrease directly to the North.*
- *Lift shaft added*
- *WC added to service the Office*

SECOND FLOOR – A103A

- *Minor addition of floor area to align with levels above and below*
- *First Floor – Second Floor stair configuration changed, resulting in a minor increase in floor area. Minor increase offset by a minor decrease directly to the North.*
- *Lift shaft added, with Second Floor – Third floor stair wrapping around the lift shaft.*
- *Decrease in depth of floor to increase distance between existing rock feature and face of house*
- *“Bridge” element to access the floor of the rock cave from the Second Floor*

THIRD FLOOR – A104A

- *Minor addition of floor area to align with levels above and below and align with lift shaft*
- *Reduction in extent of terrace.*
- *Function of Living and Main bedroom swapped in location.*
- *Pergola and retractable shade structure added over roof terrace.*
- *Awning roof overhang added to improve shading to Eastern windows below*
- *Solid balustrades added to North and South sides of the terrace, to improve privacy to neighbours.*
- *Privacy screens added to South in keeping with DA conditions.*
- *Lift shaft added*
- *Decrease in depth of floor to increase distance between existing rock feature and face of house*
- *“Bridge” element to access the floor of the rock cave from the Second Floor*

ROOF PLAN – A105A

- *Main roof simplified to a single one-way pitch skillion. Existing approved height of roof retained."*

The reduced level of the roof will be raised slightly from RL77.68 to RL77.745 (up by 0.065m)

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 C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2016/0117, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2016/0117.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2016/0117 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Environmental Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, 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. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the	The site is considered suitable for the proposed

Section 4.15 'Matters for Consideration'	Comments
site for the development	development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 the relevant 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 objections are raised and no conditions are recommended.
Aboriginal Heritage Office	No objections subject original conditions within DA2016/0117 consent remaining.

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. 649941S_03 dated 23 May 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0002774974 dated 23 May 2018).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	45
Thermal Comfort	Pass	Pass
Energy	50	50

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.

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	
Height of Buildings:	8.5m	

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 (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	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 has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	11.08m
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	30.3%

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:

Description of area of non-compliance

The proposed third floor pitched skillion room contains the element of the building which exceeds the Height of Buildings development standard.

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:

Surrounding development comprises a mixture of traditional and modern two and part two and three storey dwelling houses located within steep topography and landscape settings. It is noted that, at present, the approved ridge height of the subject dwelling (RL77.68) and the proposed height will slightly higher at RL77.745 (up by 0.065m). Therefore, the change of the roof pitch of the proposed development is not only considered to be compatible with the existing streetscape, but will be compatible by virtue of height with the surrounding properties.

The height and scale of the proposed increase in roof height is also considered compatible with the height and scale of surrounding and nearby development for the following reasons:

- The non-compliance results in a negligible impact on the bulk and scale of the resultant built form; and
- The area of non-compliance is a consequence of steep topography.

In summary, the dwelling is articulated with recessive building elements, including the change in pitch of the proposed skillion roof element, appropriately considered façade fenestration and high quality external materials and finishes.

It is considered that the proposal will provide visual interest and contribute to an articulated and modern style dwelling house.

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

Comment:

As detailed above, the resultant change in roof pitch from a traditional roof design to skillion roof design the increase in height in a result of where the roof extends over the steepest part of the site. The proposal will be minor when combined with previously approved built form such as recessive building elements, high quality external materials and finishes including large expanses of glass panels, and open timber deck areas. In this regard, the visual impact of the development is considered acceptable.

In terms of surrounding amenity, the change in roof pitch has been assessed as having an acceptable impact on adjoining and surrounding neighbours, including view loss, overlooking, overshadowing, visual outlook impacts and bulk and scale.

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

Comment:

The development is considered to be an improved visual aesthetic when viewed from the surrounding public areas given the high-quality architecture. No trees are to be removed or impacted on by the development. On this basis, the proposal will have an acceptable impact on the scenic quality of the locality.

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

Comment:

As stated previously the proposed skillion roof increases the overall height slightly by 0.065m, however as the steepest part of the roof will be measured from natural ground level a non-compliance will occur at this portion of the building. It is considered that this will not be readily discernible from surrounding public places given the minor nature of the further non-compliance, the topography of the site and the positioning of the dwelling on the site. The visual impact of development when viewed from public places will be acceptable given that the height, scale and architecture of the development is compatible with that of the existing surrounding development of the immediate and surrounding area.

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 Low Density 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 site will provide a new dwelling house, thereby providing for the housing needs of the community.

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 development is located within the R2 Low Density Residential zone and will provide a dwelling house. In this regard, this objective is not applicable.

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 development is located within the R2 Low Density Residential zone and will provide a dwelling house within a landscape setting.

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.

Comment:

The proposal seeks to vary Clause 4.3 - Height of Buildings Standard for the roof area. In doing so, the variation will provide an appropriate degree of flexibility with regard to the proposed development, in allowing the creation of a highly articulated development which will exhibit visual interest to the resultant built form and acceptable bulk and scale.

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

Comment:

Enforcing compliance with the numerical standard in this instance would not achieve a better planning outcome as the further non-complying element is minor, an integral part of the overall built form design, and will not result in any unreasonable impacts in the locality.

It is considered that the development satisfies this objective.

(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:

This application has been made under S4.55(2) of the Act. This is a standalone provision and does not rely upon Clause 4.6 to vary development standards. As such no application in

accordance with Clause 4.6 was required to be submitted. However, it is considered that the proposals consistency with the objectives of the development standard and objectives of zone R2 Low Density Residential are sufficient to justify that compliance is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the contravention.

(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:

For reasons detailed above, the proposal is considered to be in the public interest as it is consistent with the Objectives of the R2 Low Density Residential zone in the WLEP 2011.

It is also noted that the previously approved non-compliance could be maintained by deleting the change in the roof pitch. However, this would not provide a better planning outcome in terms of improving amenity for the occupants of the dwelling.

Also, it is considered that the proposal satisfies the objectives of the development standard and that the environmental planning grounds for a departure from the building height development standard are sufficient and considered to be consistent with recent Land and Environment Court case decisions, including *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 9, *Moskovich v Waverley Council* [2016] NSWLEC 1015, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and *Wehbe v Pittwater Council* [2007] NSWLEC 827 42.

(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 Low zone in the WLEP 2011.

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

Comment:

Not applicable.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	A
B1 Wall height	7.2m	

B3 Side Boundary Envelope	4m (south)	4m 0.6m encroachment distance
	4m (north)	4m 1.65m er distance
B5 Side Boundary Setbacks	0.9m (south)	9.7 1.45m
	0.9m (north)	0.9 3.90m
B7 Front Boundary Setbacks	6.5m	
B9 Rear Boundary Setbacks	6m	
D1 Landscaped Open Space and Bushland Setting	40%	35.5%

* 37.4sqm has been discounted from the overall calculations for landscaping as the setback to the southern boundary is only 1.909m. It is noted the design of the footings for the dwelling were required to be altered due to result of providing footings to minimise the impact on the rock overhang and shelter on the site (Aboriginal Heritage).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed maximum wall height is 10m on the northern elevation of the dwelling (third floor). It is noted that the site is classified as a Significant Sloping Site (SSS) with a slope of 41.9% (18m fall over the site).

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 modified proposal has been designed by stepping the building up the slope of land allowing it to integrate with the site constraints. The dwelling will be located below the dwellings/properties which front Corkery Crescent and therefore will minimal visual impact on these properties.

Given the location of the building footprint further up the hill then the adjoining dwellings and the proposed design it is considered the visual impact of these properties has been minimised to an extent. The main views of these adjoining properties are in a easterly direction to the water and district views below and therefore it is considered that the main living areas of these properties are directed away from the proposed dwelling.

Given the above it is considered that the proposal address this merit consideration.

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

Comment: The modified proposal has been designed to slope up the site to integrate with the topography of land. It is noted that the dwelling has a now has a maximum height of 11.08m at the upper most floor (third level - eastern edge), however it is considered that the proposal overall is generally beneath the existing tree canopy level and therefore considered to be generally consistent with this merit.

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

Comment: The proposal has been designed by stepping the building up the slope of land allowing it to integrate with the site constraints. The dwelling will be located below the dwellings/properties which front Corkery Crescent and therefore will allow for reasonable sharing of views from these properties.

Given the location of the building footprint further up the hill then the adjoining dwellings and the proposed design it is considered these adjoining properties will maintain reasonable views in a easterly direction to the water and district views below.

Given the above it is considered that the proposal address this merit consideration.

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

Comment: The proposal has been designed by stepping the building up the slope of land allowing it to integrate with the site constraints. The dwelling will be located below the dwellings/properties which front Corkery Crescent and therefore will minimal visual impact on these properties.

Given the location of the building footprint further up the hill then the adjoining dwellings and the proposed design it is considered the impact of these properties has been minimised to an extent. The main views of these adjoining properties are in a easterly direction to the water and district views below and therefore it is considered that the main living areas of these properties are directed away from the proposed dwelling.

Given the above it is considered that the proposal address this merit consideration.

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

Comment: The proposal has been designed by stepping the building up the slope of land allowing it to integrate with the site constraints and reduce extensive excavation of the land.

Given the above it is considered that the proposal address this merit consideration.

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

Comment: The low pitched roof is appropriate for this dwelling house and demonstrates sufficient innovation and variation in roof design to ensure compliance with this merit

consideration.

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 S1.3 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 dwelling encroaches both the northern and southern envelopes. The maximum encroachment is 0.75m at the eastern end for a distance 4m on the southern elevation of the dwelling until compliance is met. A maximum encroachment of 1.5m at the eastern end for a distance of 2.7m on the northern elevation of the dwelling until compliance is met.

It is noted that the site is a Significant Sloping Site (SSS) with a slope of 41.9% and an approximate fall of 18m from the top to the bottom of the site.

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 modified proposal has been designed by stepping the building up the slope of land allowing it to integrate with the site constraints. The dwelling will be located below the dwellings/properties which front Corkery Crescent ensuring the development does not become visually dominant.

The combination of the location of the building to the adjoining dwellings and design has ensured that the resultant dwelling will not be visually dominant. Additionally, the main views of these adjoining properties are in a easterly direction to the water and district views below and therefore it is considered that the main living areas of these properties are directed away from the proposed dwelling.

Given the above it is considered that the proposal address this merit consideration

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

Comment: The modified proposal will allow for adequate light and solar access to the adjoining dwellings/properties. It is noted that No. 28 Lyly Road will be the most impacted by the proposal given its proximity to the proposal (south of the subject site). However, it is considered that the proposal will still allow for adequate amounts of light and solar access to this property and its areas of private open spaces ensuring compliance with this merit consideration.

The building height and bulk has been minimised and the building steps down the slope of the

land. The building is set well back on the allotment and landscaping will screen and soften the building. Additionally, it is considered that privacy and reasonable solar access is maintained to adjoining and surrounding properties.

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

Comment: The modified proposal has been designed by stepping the building up the slope of land allowing it to integrate with the site constraints. The combination of the location of the building to the adjoining dwellings and the design has ensured that the development responds accordingly to the topography of the site.

Given the above it is considered that the proposal address this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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

Northern Beaches Council Contributions Plan 2018

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0271 for Modification of consent to DA2016/0117 granted for construction of a dwelling house on land at Lot 15 DP 241344,30 Lyly Road, ALLAMBIE HEIGHTS, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A000	21 May 2018	Mark Hurcum Design Practice Architects
A000A/P1	17 April 2018	Mark Hurcum Design Practice Architects
A101 A	21 May 2018	Mark Hurcum Design Practice Architects
A102 A	21 May 2018	Mark Hurcum Design Practice Architects
A103 A	21 May 2018	Mark Hurcum Design Practice Architects
A104 A	21 May 2018	Mark Hurcum Design Practice Architects
A105 A	21 May 2018	Mark Hurcum Design Practice Architects
A201 A	21 May 2018	Mark Hurcum Design Practice

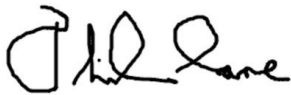
		Architects
A202 A	21 May 2018	Mark Hurcum Design Practice Architects
A203 A	21 May 2018	Mark Hurcum Design Practice Architects
A204 A	21 May 2018	Mark Hurcum Design Practice Architects
A221 A	21 May 2018	Mark Hurcum Design Practice Architects
A231 A	21 May 2018	Mark Hurcum Design Practice Architects

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

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

Signed



Phil Lane, Principal Planner

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



Steven Findlay, Manager Development Assessments

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

Notification Document	Title	Date
 2018/343190	Notification Map	05/06/2018

ATTACHMENT C

Reference Number	Document	Date
 2018/341607	Report - BASIX Certificate	23/05/2018
 2018/341608	Report - NATHERS Certificate	23/05/2018
 2018/341590	Plans - Master Set	29/05/2018
 2018/341606	Report - Statement of Environmental Effects	30/05/2018
 MOD2018/0271	30 Lyly Road ALLAMBIE HEIGHTS NSW 2100 - Section 96 Modifications - Section 96 (2) Environmental Impact	31/05/2018
 2018/334397	DA Acknowledgement Letter - Australian National Builders Pty Ltd	31/05/2018
 2018/341563	Modification Application Form	05/06/2018
 2018/341564	Applicant Details	05/06/2018
 2018/341592	Plans - Internal	05/06/2018
 2018/341604	Plans - External	05/06/2018
 2018/343150	ARP Notification Map	05/06/2018
 2018/343177	DA Acknowledgement Letter (not integrated) - Australian National Builders Pty Ltd	05/06/2018
 2018/343190	Notification Map	05/06/2018
 2018/343204	Notification Letter - 8	05/06/2018
 2018/355833	Request to change applicants - 30 LyLy Road Allambie Heights	12/06/2018
 2018/359967	Mod2018/0271 - 30 LyLy Road Allambie Heights - Request to change Name of Applicant from Australian National Builders P/L to Markanne P/L	13/06/2018
 2018/370887	Referral - Aboriginal Heritage Office - 30 Lyly Road Allambie Heights	18/06/2018