

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0809
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 72 DP 841873, 58 Lagoon Street NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2020/0358 granted for alterations and additions to a semi-detached dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Justin Havelock Sinfield
Applicant:	Justin Havelock Sinfield
Application Lodged:	04/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	15/11/2021 to 29/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify DA2020/0358, which approved alterations and additions to an existing semi-detached dwelling. The proposed changes involve minor alterations to the approved lower deck, including;

- Minor extension to the north up to 0.8m,
- 1.0m reduction from the west,
- Raising the deck level to RL 2.80 (50mm increase).

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 - Zone R2 Low Density Residential

Warringah Development Control Plan - B5 Side Boundary Setbacks

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

SITE DESCRIPTION

Property Description:	Lot 72 DP 841873 , 58 Lagoon Street NARRABEEN NSW 2101
Detailed Site Description:	The subject site is identified as Lot 72 in DP 841837 and known as 58 Lagoon Street, Narrabeen. The site is located within the R2 Low Density Residential zone. The site is a battle-axe allotment and is located at the western side of Lagoon Street. The site has an area of 611.6m². The access handle has a street frontage of 3.5m, and the site has a width of approximately 15.6m and a depth of 32.97m. The sites rear boundary fronts Narrabeen Lagoon. The site is currently occupied by a two storey brick semi-detached dwelling. An attached carport is located adjacent to the dwelling and adjoins the dwelling to the east, No. 58A Lagoon Street. There is no significant vegetation on site. Surrounding sites consist of a mix of one and two storey dwelling houses, residential flat buildings and terrace style houses of various ages.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant applications:

DA93/152

Development application for the erection of an attached dual occupancy. This application was approved by Council on 27/04/1993.

DA93/317

Development application for the subdivision of an approved attached dual occupancy. As such, this application rendered the dwellings semi-detached dwellings, as they were no longer on one lot of land. This application was approved by Council on 26/07/1993.

CDC2013/0437

Comply Development Certificate for alterations and additions to an existing semi-detached dwelling was received by Council on the 16/01/2014.

DA2018/1264

Development application for the alterations and additions to a semi-detached dwelling, including but not limited to the construction of a new main bedroom, decking and ground floor storage and laundry. This application was approved by Council on the 16/11/2018.

Mod2019/0003

Modification application for DA2018/1264, including internal changes and alterations to the roof pitch and materials. This application was approved by Council 02/04/2019, subject to the following condition:

- **No.1B Amendments to the approved modification plans** - *The change in the roof design involving an increase in the pitch from 2 degrees to 15 degrees is not approved and is to be deleted from the approved modification plans.*

REV2019/0021

Review of determination to delete the above-mentioned condition. However, the application was not able to be determined within the required time frame.

Mod2019/0567

Modification application for DA2018/1264, including the removal of condition No.1 B Amendments to the approved modification plans allowing the proposed increased roof pitch. The modification also included timber framed seating, a sliding door off timber deck and a timber framed deck located in the rear yard. This application was approved by Council 09/03/2020.

DA2020/0358

Development application for the alterations and additions to an existing semi-detached dwelling house, including but not limited to the construction of a double carport and lower deck. The application was approved by Council on the 31/08/2020.

Mod2021/0063

Modification application for DA2018/1264, including changes to windows, bifold doors and the internal ground floor plan. This application was approved under delegation on 21/04/2021.

Mod2021/0087

Modification of Development Consent DA2020/0358, including alterations to the rear deck. The application was approved by Council on the 21/04/2021.

Mod2021/0866

Modification application for DA2018/1264, including changes to windows, internal alterations and the installation of a kitchenette to the ground floor. This application is currently under assessment (19/01/2022).

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 DA2020/0358, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
	A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the

Section 4.55(1A) - Other Modifications	Comments
regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: (a) the modification involves a minor alterations the approved lower deck; (b) compliance with the relevant planning controls is retained; (c) neighbouring impacts are reasonable and acceptable; and (d) the development will remain substantially the same as those approved under the original development consent.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0358 for the following reasons: (a) the changes are of a minimal environmental impact, (b) the modification does not involve any significant changes to the approved built form.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(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	See discussion on "Notification & Submissions Received" in this report.
(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.	

Section 4.15 Assessment

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

The relevant matters for consideration under Section 4.15 of the Environmental Planning and

Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and supporting documentation. <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.

Section 4.15 'Matters for Consideration'	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

The use of the land as a Semi-Detached Dwelling is a prohibited land use under the WLEP 2011. However, the site has Existing Use Rights for the purposes of a semi detached dwelling as per Division 4.11 of the Environmental Planning and Assessment Act, 1979.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/11/2021 to 29/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

No referrals were sent in relation to this application

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 (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

Not applicable to the site.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not applicable to the site.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place*

to
ensure
that
there
are
appropriate
responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.

Comment:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified. Not applicable.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and*

- will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

The foreshore area is heavily modified and no aboriginal heritage sites have been identified within the vicinity of the proposed development. The location of the works are not likely to cause an adverse impact upon the matters identified in this clause. A condition of consent has been placed to stop works if any Aboriginal Engravings or Relics are unearthed.

As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal is not likely to cause increased risk of coastal hazards on that land or other land.

Is the development permissible?	No
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

The proposed modifications will not alter work's level of compliance with the prescribed Development Standards under Part 4 of WLEP2011.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

The current use of the site as a semi-detached dwelling is a prohibited use in the R2 zone under the WLEP 2011, however the site has the benefit of Existing use Rights as a semi-detached dwelling, which was confirmed as part of the assessment of the original DA.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approval
B3 Side Boundary Envelope	4m (N)	Within envelope
	4m (S)	Within envelope
B5 Side Boundary Setbacks	0.9m (N)	5.04m
	0.9m (S)	2.68m
B7 Front Boundary Setbacks	6.5m	>6.5m
B9 Rear Boundary Setbacks	6m	6.2m
D1 Landscaped Open Space and Bushland Setting	40%	29.42% (179.92m ²)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

The submitted plans indicate that the proposed deck will be set back 1.75m from the southern side boundary, which varies from the 2.0m setback approved under Mod2021/0087. However, these changes are not listed within the Statement of Modification and therefore, conditions have been imposed to maintain the approved 2.0m setback.

D1 Landscaped Open Space and Bushland Setting

The modifications associated with the subject application include a minor increase to the approved landscaped open space under DA2020/0358. Whilst the proposal remains non-compliant with the numerical requirements the outcomes of the original assessment and consistency with the control objectives is maintained.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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. Mod2021/0809 for Modification of Development Consent DA2020/0358 granted for alterations and additions to a semi-detached dwelling on land at Lot 72 DP 841873,58 Lagoon Street, NARRABEEN, subject to the conditions printed below:

A. Add Condition No.1B - 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
A1 - RevA: Deck plan	Not dated	Sally Gardner Design and Draft
A4 - RevB: North and south elevation	Not dated	Sally Gardner Design and Draft
A5 - RevB: East and west elevation	Not dated	Sally Gardner Design and Draft

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

B. Add Condition - No.6A Amendments to the Approved Plans, to read as follows:

The rear deck is to maintain a 2.0m southern side setback.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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

Signed



Kye Miles, Planner

The application is determined on 20/01/2022, under the delegated authority of:



Claire Ryan, Acting Development Assessment Manager