

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0567
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 72 DP 841873, 58 Lagoon Street NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2018/1264 granted for alterations and additions to 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:	Justin Havelock Sinfield
Applicant:	Justin Havelock Sinfield
Application Lodged:	14/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/12/2019 to 16/12/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA2018/1264 and Modification MOD2019/0003.

Modification MOD2019/0003 proposed to increase the pitch of the approved roof from 2 degrees to 15 degree pitch. The modification was determined for approval, however, the increased roof pitch was not approved due to issues with view loss and a condition was included in the consent deleting the change to the roof pitch from the approved modification plans. The applicant submitted a review of determination REV2019/0021 to review the imposed condition removing the roof pitch. However, the application was not able to be determined within the required time frame.

The application is for the removal of condition No.1 B Amendments to the approved modification plans allowing the proposed increased roof pitch. The modification also includes timber framed seating, a sliding door off timber deck and a timber framed deck located in the rear yard.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B9 Rear Boundary Setbacks

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

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - E8 Waterways and Riparian Lands

SITE DESCRIPTION

Property Description:	Lot 72 DP 841873 , 58 Lagoon Street NARRABEEN NSW 2101
Detailed Site Description:	The subject site consists of one battle-axe allotment located on the western side of Lagoon Street NARRABEEN . The site is irregular in shape with a width of 15.835m along western rear boundary and a depth of 57.3m. The site has a surveyed area of 611.6m². The site is located within the R2 Low Density Residential zone and accommodates The site is currently occupied by a two storey brick 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 and no known threatened species.

Detailed Description of Adjoining/Surrounding Development

Surrounding sites consist of a mix of one and two storey dwelling houses, residential flat buildings and terrace style houses of various ages. The rear of the site fronts Narrabeen Lagoon.

Map:



SITE HISTORY

Mod2019/0003 was determined for approval 02 April 2019. The Modification included a condition to amend the plans by removing the increase in the pitch of the roof due to concern with view loss. The applicant submitted a Section 8.2 Review of Determination REV2019/0021. Due to a Council error the review of determination was not completed within the statutory time period and could not be determined. The applicant was advised to submit a modification in place of the Review of Determination.

Other relevant applications

- Development application DA2018/1264 for the alterations and additions to a dwelling house was approved by Council on the 16/11/2018.
- Application CDC2013/0437 for alterations and additions to an existing dwelling was received by Council on the 16/01/2014.
- Development Consent 93/317 for the subdivision of an attached Dual Occupancy was granted by Council 26th July 1993
- Development Consent 93/152 for the construction of an attached Dual Occupancy was granted 27th April 1993

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 DA2018/1264, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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 DA2018/1264.
(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 Local Environment 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,	No submissions were received in relation to this application.

Section 4.55(1A) - Other Modifications	Comments
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	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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>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.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Moira Janet Howie	7 / 54 Lagoon Street NARRABEEN NSW 2101

One submission was received with this current application and one with the previous review of determination REV2019/0021. Both submissions have been included below.

The following issues were raised in the submissions and each have been addressed below:

- Extension of existing vegetation
- Overshadowing
- View loss
- Privacy

The matters raised within the submissions are addressed as follows:

- **Extension of existing vegetation**

The submission raised the following concerns *'I am concerned that the owner intends to extend a hedge he already has alongside his fence to the end of his property. The roots of the hedge that is already there is causing a lot of damage to my water pipes. They have to be cut with the electric eel twice a year. I do not have a hedge on my side and I have documents from the plumber to support this claim. It costs me average \$1200 per annum to cut his tree roots. I ask that the owner does not plant any more damaging hedges and ideally he removes the hedge that is causing extensive damage to my water pipes'.*

Comment:

The proposed works do not include any landscaping works along the shared boundary with no. 54 Lagoon Street. Any issues relating to existing drainage issues is a matter between the affected parties and does not form part of this assessment.

- **Overshadowing**

The submission raised concern that the proposal would result in unreasonable overshadowing of no. 60 Lagoon Street.

Comment:

Shadow diagrams submitted with MOD2019/0003 show that an increase to the roof pitch will not cause unreasonable overshadowing to the adjoining properties. The proposal meets the requirements of clause D6 Access to Sunlight.

- **View loss**

The submission raised concern that the proposal would result in unreasonable view loss from the dwelling located on the corner of Lagoon Street and Loftus Street at no. 60 Lagoon Street.

Comment:

This issue is discussed in detail under part D7 Views of this report. In summary, the proposal was assess against the planning principles established in the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140 and it was determined that because of the level of compliance and that a more skilful design could not be achieved, the level of view sharing was reasonable.

- **Privacy**

The submission raised concern with the approved windows on the northern elevation of the addition at no. 58 Lagoon Street.

Comment:

The windows that are of concern to the neighboring property at no. 60 Lagoon street were previously approved under DA2018/1264 and do not form part of this application.

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been

External Referral Body	Comments
	received within the 21 day statutory period and therefore, it is assumed that no 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 Modification MOD2019/0003 (see Certificate No. A164973_05 dated 20 December 2018).

A condition was included in the recommendation of MOD2019/0003 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.

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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	6.5m	7.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.5 (Repealed)	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	6.2m	Bottom of roof - 6.7m	Yes
B3 Side Boundary Envelope	North - 4m	Triangle shape encroachment of up to 1.1m	No change	Yes
	South - 4m	No encroachment	No encroachment	Yes
B5 Side Boundary Setbacks	North - 0.9m	1.2m	1.2m	Yes
	South - 0.9m	7.8m	1m	Yes
B9 Rear Boundary Setbacks	6m	14.1m - 15.2m	Proposed deck - 1.3m	No
D1 Landscaped Open Space and Bushland Setting	40%	36.4% (223m ²)	29% (177.8m ²)	No

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
B9 Rear Boundary Setbacks	No	No
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
D1 Landscaped Open Space and Bushland Setting	No	No
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
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	No	No
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed deck at the rear of the site has a setback of 1.5m from the rear boundary.

The control requires a 6.5m setback to the rear boundary.

The proposed deck does not meet the objectives of the control, as noted below, and cannot be supported. A condition will be included in the consent requiring the deck to be deleted from the plans prior to the approval of the construction certificate.

Merit consideration:

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

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

Comment:

The proposed modification does not comply with the landscaped open space requirements of the WDCP. The proposed development has a landscaped open space calculation of 29% (33.3% with the exclusion of the access handle) and it is considered that opportunities for deep soil landscape areas are not maintained.

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

Comment:

The overall size and height of the proposed deck will reduce the sense of openness at the rear of the site and is inconsistent with the immediate surrounding properties.

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

Comment:

The proposed height and location of the deck within the rear yard will provide those using the deck views of the rear yard and private open space of the adjoining properties to the north and south at nos. 60 and 54 Lagoon Street. It is assumed that the raised deck is for the purpose of viewing the lake over the existing 1.8m high rear fence and dense hedging. Currently views of the adjoining rear yards are not easily obtainable from the existing level rear yard of the site and that the raised deck will allow for greater opportunities to do so. The applicant has presented an argument that the rear yards and private open space of the adjoining properties privacy is already compromised as they are visible from the adjacent public reserve. However, Council does not consider this to be the case as the section of the public reserve in front of nos 60, 58 and 54 Lagoon Street is not considered a formal access way around the Lagoon or maintained by Council. Additionally, it was raised that no submissions were received regarding impacts on privacy in regards to the rear deck, while no submissions were received Council must look at all aspects of the development and potential impacts it may have regardless of submissions being received.

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

Comment:

The location of the raised deck does not maintain the visual continuity and pattern of buildings within the rear yards of the immediate surrounding sites along the western side of Lagoon Street. Properties within the immediate vicinity of the site and with of a similar property type (dwelling houses, detached or semi attached dual occupancy and town houses) at nos. 68, 60, 54, 52A Lagoon Street, 13 and 11 Loftus Street do not have similar structure within the rear setback area of the site are generally landscaped with lawn area of vegetation.

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

Comment:

The location and height of the deck will allow for direct views into the rear yards of the adjoining properties at nos. 60 and 54 Lagoon Street. The proposed deck at the rear of the site compromises the privacy of the adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of 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 not supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposed development provides a landscaped open space (LOS) of 29%. The most recent approved modification MOD2019/0003 allowed for a non-compliant LOS of 36.4%, based on fact the site is a rear battleaxe allotment and that a proportion of site area includes the shared access handle of approximately 77.7m². The area of site available for development was calculated at 533.9m². Based on this calculation MOD2019/0003 was approved with a revised LOS of 42%. The proposed modification based on the reduced site area calculation provides a LOS of 33.3%.

Based on objectives of the control and a review of other similar properties with dwelling houses, detached or semi attached dual occupancies and town houses in the immediate vicinity (nos. 68, 60, 54, 52A Lagoon Street, 13 and 11 Loftus Street) Council cannot support the proposed non-compliance. While there are examples of sites with minimal landscaping along Lagoon Street, these properties were not approved under the current Development Control Plan requirements of 40% landscaping, not within the immediate vicinity of the site or with the same site context, or were determined under the provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 which allows for a lower landscaped open space requirement or 30%.

Other examples of sites that do not have similar site contexts are nos. 50 and 48 Lagoon Street which have paved car parking to the rear property boundary and almost no landscaping on the site. These properties are residential flat buildings which were approved and built prior to the current zoning and landscape requirements.

The applicant has provided examples of properties within the area and same R2 Low Density Zoning with non-compliant Landscaping. A review of these properties and development applications has shown that they either comply with the landscape open space requirement, are improving the landscaping on the site or there is no change as a result of the proposed works. The proposal will not be improving the landscaping on the site or maintaining the current landscaped area as previously determined.

In particular, the applicant has referred to a dwelling at 204 Ocean Rd which has a very low LOS calculation. The original consent granted under DA2015/0037 indicates that the landscaping ratio for the site is a continuation of an existing circumstance. Similarly, the adjoining dwelling at No.58A which was initially approved as part of an attached dual occupancy, has a much lower LOS ratio than the subject site. This is a result of the subdivision of the original dual occupancy in 1993. Consents or modified consents granted since that time at 58A Lagoon Street have reported the LOS ratio as unchanged. The applicant refers to a 2015 approval at 159 Ocean Street. The relevant assessment report states that the application is compliant with the 40% requirement. The applicant also refers to non-compliant LOS approved at 19 Malcolm Street. The assessment report from a 2010

application indicates that at 31%, the LOS was an improvement on the previous 30% calculation.

It is considered that the proposal has not provided adequate justification for a further reduction in the landscape open space requirement than has already been approved, does not comply with the requirement and objectives of clause B9 Rear Boundary Setbacks of the WDCP and does not meet several of objectives of this clause. A condition will be included in the consent requiring the deck to be removed from the plans prior to the construction certificate approval.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The site is a rear battle-axe allotment. Therefore the subject site viewed from from the streetscape. Therefore, planting is not required from the site for the purposes of maintaining and enhancing the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The location and size of the proposed deck does not contribute to the conservation and enhancement of indigenous vegetation, topographical features and habitat for wildlife. As the proposal does not provide for enhancement with additional native plantings and due to concern raised with the non-compliance with the landscaping requirement, the proposal is not considered to comply with this particular objective.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

No additional landscaping has been proposed as part of this development. The proposed 33.6m² deck will further reduce opportunities for landscaping on the site and the location of the proposal does not allow for planting in front, behind or to the side of the deck.

- *To enhance privacy between buildings.*

Comment:

The location and height of the proposal does not enhance privacy between buildings. The raised nature of the deck to allow for views of Narrabeen Lake, provides a viewing platform that will allow for views of the rear yard and private open space of the adjoining properties at nos. 60 and 54 Lagoon Street. While these properties can be viewed from the informal path located in the public reserve that runs between these properties and Narrabeen Lagoon, the section of the public reserve in front of nos 60, 58 and 54 Lagoon Street is not considered a formal access way around the Lagoon or maintained by Council.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

It is considered that the site currently provides sufficient areas for outdoor recreation and that

the proposed raised deck will not sufficiently increase this.

- *To provide space for service functions, including clothes drying.*

Comment:

Sufficient space for service functions are available on the site.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposed development is considered to facilitate water management including the infiltration of stormwater for the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D7 Views

No submissions were received regarding view loss. However, two submissions were previously received, one for the review of determination REV2019/0021 from no. 60 Lagoon Street and one during the assessment of the modification MOD2019/0003 from no. 7/12 Loftus Street. As there is no change to the design of the proposal from previous applications a view loss assessment has been undertaken for both nos. 60 Lagoon Street and 7/12 Loftus Street. A site inspection was conducted by the assessing officer of no. 60 Lagoon Street and a review of the previous assessments and site photos has been used to determine the extent of the impact from no. 7/12 Loftus Street.

No. 60 Lagoon Street is a dual occupancy with detached dwellings. It is the original house on the block, on the corner of Lagoon Street and Loftus Street that is affected by the proposed development. Views from the other dwelling located at the north-western end of the site are not impacted by the proposal.

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

No. 60 Lagoon Street, Narrabeen

The views from the rear raised balcony located off the Kitchen and Dining are across the side boundary shared with no. 58 Lagoon Street and are of Narrabeen Lagoon water views, distant

land water interface and tree top district views.

The views from this dwelling are partially obstructed by existing vegetation. Narrabeen Lagoon water views and land water interface will be completely lost as a result of the original development approval for the addition DA2018/1264.

No. 7/12 Loftus Street

The views from the first floor unit at 7/12 Loftus Street are in a west and south-westerly direction, and comprise of Narrabeen Lagoon water views, distant land water interface and tree top district views.

The views obtained from the 7/12 Loftus Street are oblique and, for the most part, over the top of neighbouring property roofs and partly obscured by existing vegetation.

The views which are subject to be affected from the proposed development are a small portion of Narrabeen Lagoon water which is obtained over the secondary front boundary of the Loftus Street property, the front boundary of Lagoon street and down the side setback area of No.58 Lagoon Street.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

No. 60 Lagoon Street, Narrabeen

Views are obtained from the raised rear balcony, kitchen and dining area across the side boundary shared with nos. 58 and 58A Lagoon Street. The current views from this site are enjoyed from a standing position and are completely obstructed by existing vegetation from a sitting position.

No. 7/12 Loftus Street, Narrabeen

The views enjoyed from the first floor residential unit at 7/12 Loftus Street are principally from the dining room and balcony area.

The views from these areas are obtained across the properties secondary front boundary, the front setback area of Lagoon Street and over roof tops. Existing vegetation and power poles and power lines also obscures some sections of the Narrabeen Lagoon view.

The views which are subject to be affected from the proposed development are a small portion of Narrabeen Lagoon water, viewed from the dining room window. This area of view is available from a sitting and standing position.

The ability to maintain this area of Narrabeen Lagoon water views from a sitting and standing position are impacted due to the viewing angle, and the view availability of this area reduces the further into the dwelling it is viewed.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued

because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

No. 60 Lagoon Street, Narrabeen

The proposed increase to the roof pitch will result in the loss of partial tree top district views. In this regard the view loss is considered minor.

No. 7/12 Loftus Street, Narrabeen

The proposal will encroach into a small portion of the available view of the Narrabeen Lagoon water from the dining room.

The views from the balcony area will not be impacted from the proposal, as the view from this area is currently obscured by existing trees, telegraph lines and existing rooftops.

A large portion of Narrabeen Lagoon water views, all the existing land and water interface and tree top district views will be retained.

Therefore, the view impact is ranked as minor - moderate due to the level of impact on the available water view, and the scale of construction into the restricted view line along the side setback area of No. 58 Lagoon Street.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The applicant has stated in previous submissions and correspondences to Council that the increase to the roof pitch is required to allow for drainage from the roof and that a more skilful design can not be achieved to provide this. It is considered by Council that a increase in the pitch is required to allow for appropriate drainage from the roof and will still maintain the majority of views from the adjoining properties. The proposal is not considered unseasonable in its context.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The increased roof pitch will allow for drainage from the roof and be more consistent with the character of the existing dwelling.

- *To ensure existing canopy trees have priority over views.*

Comment:

No trees are proposed be removed as part of this proposal.

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

E8 Waterways and Riparian Lands

Merit consideration:

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

- *Protect, maintain and enhance the ecology and biodiversity of waterways and riparian land.*

Comment:

It is not known what impacts the proposed 33sqm of decking would have upon the ecology and biodiversity of the waterway, however it is noted that the site offers other opportunities for the provision of decked open space outside the sensitive area mapped as *waterways and riparian land*. Together with the increased non-compliance with the LOS provisions, the proposed location of the deck is not considered appropriate.

- *Encourage development to be located outside waterways and riparian land.*

Comment:

As above, alternatives for recreation areas outside the riparian area are being utilised already by this development, or could be facilitated.

- *Avoid impacts that will result in an adverse change in watercourse or riparian land condition.*

Comment:

As above.

- *Minimise risk to life and property from stream bank erosion and flooding by incorporating appropriate controls and mitigation measures.*

Comment:

Proposing structures within the riparian area is not considered consistent with this objective.

- *Maintain and improve access, amenity and scenic quality of waterways and riparian lands.*

Comment:

Decking of an area of 33sqm is not considered to be consistent with this objective which would prevent this area from supporting a vegetated buffer to the waterway, thereby adversely affecting amenity and scenic quality of the riparian land.

- *Development on waterways and riparian lands shall aim to return Group B and Group C creeks*

to a Group A standard (as described in Warringah Creek Management Study, 2004) through appropriate siting and development of development.

Comment:

n/a

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP.

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 Section 7.12 Contributions Plan 2019

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. Mod2019/0567 for Modification of Development Consent DA2018/1264 granted for alterations and additions to a dwelling house on land at Lot 72 DP 841873,58 Lagoon Street, NARRABEEN, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A1 Roof Plan	20/12/18	BDA Building Designers
A1 Deck & Roof Plan	20/12/18	BDA Building Designers
A3 Proposed Ground Floor Plan	21/01/19	BDA Building Designers
A4 East & West Elevations	20/12/18	BDA Building Designers
A5 North & South Elevations	20/12/18	BDA Building Designers
A6 Sections	20/12/18	BDA Building Designers

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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

B. Delete Condition No. 1B Amendments to the approved modification plans to read as follows:

The following amendments are to be made 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.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

C. Add Condition No. 1B Amendments to the approved modification plans to read as follows:

The following amendments are to be made to the approved modification plans:

- The proposed timber framed deck as shown on drawing no. A1 Deck & Roof Plan is not approved and is to be deleted from the approved modification plans.

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



Julie Edwards, Planner

The application is determined on 09/03/2020, under the delegated authority of:



Anna Williams, Manager Development Assessments