

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0832
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 3 DP 11737, 62 Evans Street FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2015/1258 granted for demolition works and the construction of a dwelling house, secondary dwelling, garage and swimming pool
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:	Terry Androutsos Georgina Androutsos
Applicant:	Terry Androutsos
Application Lodged:	01/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	10/11/2021 to 24/11/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks consent for the placement of solar evacuated tubes and irrigation equipment on the roof level. The proposal also includes a fixed screen structure to mitigate the visual impact of the service equipment.

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 - D3 Noise

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D11 Roofs

SITE DESCRIPTION

Property Description:	Lot 3 DP 11737 , 62 Evans Street FRESHWATER NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Evans Street. The site is generally regular in shape with a frontage of 13.305m along Evans Street and a maximum depth of 35.025m. The site has a surveyed area of 473.7m². The site is located within the R2 Low Density Residential zone and accommodates split-level two storey residential dwelling and attached secondary dwelling currently under construction. The site falls approx 9.5m from the rear (north) boundary towards the front (south) boundary. Coastal views are available toward Freshwater Beach to the southeast. The site does not contain any significant vegetation. A number of natural rock outcrops exist throughout the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential dwellings and ancillary development. Higher density development, including residential flat

buildings and the Harbord Diggers Club are located at the eastern end of Evans Street.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA2015/1258 - Demolition works and the construction of a dwelling house, secondary dwelling (pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009), garage and swimming pool - Approved on 20 May 2016.
- Mod2021/0832 - Modification of Development Consent DA2015/1258 granted for demolition works and the construction of a dwelling house, secondary dwelling, garage and swimming pool - Approved 27 September 2019.

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 DA2015/1258 and Mod2021/0832, 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 for the following reasons: The proposed modification is minor in extent, being limited to service equipment and a 1.5m high screen at the roof level. There is no further change to the approved built form and minimal impact to the adjoining properties.
(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 DA2015/1258 and Mod2021/0832 for the following reasons: <i>"(1A) Modifications involving minimal environmental impact 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—:</i> <i>(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"</i> <u>Comment:</u> The consent as proposed to be modified is substantially the same development as that for which the consent was originally granted. The proposed development retains a single residential use and does not alter the intent of the lot to be developed. The proposed modification involves the placement of service equipment and a new screen to the roof level. As such, the development remains materially the same as originally approved. As such, the modified application is "substantially the same development" as the originally approved development and therefore may be considered under Section 4.55(1A).
(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,

Section 4.55(1A) - Other Modifications	Comments
(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	Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation 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.	See discussion on "Notification & Submissions Received" in this report.

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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	<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

Section 4.15 'Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <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>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <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. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 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/Manly/Pittwater 21 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	The site is considered suitable for the proposed development.

Section 4.15 'Matters for Consideration'	Comments
suitability of the site for the 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 from 10/11/2021 to 24/11/2021 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Michael James Palme	64 Evans Street FRESHWATER NSW 2096

The issues raised in the submission are addressed as follows:

- **Service equipment noise**

The submission raised concerns that the service equipment located on the roof level will result in acoustic privacy impacts.

Comment:

The service equipment located on the roof, being solar evacuated tubes and an irrigation system for the green roof, is not anticipated to generate excessive noise and is partially enclosed by the proposed screen. A condition is imposed to ensure that the equipment does not produce noise levels that will adversely impact the amenity of surrounding properties.

- **Visual impact**

The submission raised concerns that the additional height associated with the proposed screen will result in adverse visual impact.

Comment:

The proposed screen structure is located centrally within the roof footprint and has been amended to reduce its height and length. The screen is not considered to result in unreasonable visual impact and the green roof will soften the appearance of the structure.

- **Overshadowing**

The submission raised concerns that the proposal will result in additional overshadowing impacts.

Comment:

The submitted shadow diagrams indicate that there will be no additional overshadowing of the rear private open space area of 64 Evans Street.

- **Use of roof level**

The submission raised concerns that the roof level may be used as a living space and impact the privacy of surrounding properties.

Comment:

The proposed screen structure is open at the south-western elevation and is not roofed. Given the limited access to the roof level of the dwelling and the location of service equipment in this area, it is not anticipated to be usable as a private open space area and no approval is granted for such use.

- **Green roof space**

The submission raised concerns that the proposal will reduce the area of the proposed green roof.

Comment:

The proposed changes relate to the central section of the roof and do not alter the approved green roof area.

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 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 (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local 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	% Variation	Complies
Height of Buildings:	8.5m	9.7m	6.8m (proposed works)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
--------	------------------------------

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed Works	Complies
B1 Wall height	7.2m	9.1m	6.6m	Yes
B3 Side Boundary Envelope	E: 5m	Outside envelope	Within envelope	Yes
	W: 5m	Outside envelope	Within envelope	Yes
B5 Side Boundary Setbacks	E: 0.9m	1.5m to 3.6m	6.3m	Yes
	W: 0.9m	2m	3.3m	Yes
B7 Front Boundary Setbacks	6.5m	4.8m to 6.5m	18.5m	Yes
B9 Rear Boundary Setbacks	6m	3.05m	5.7m to 6m	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
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed 5.7m-6m rear setback to the roof screen structure is non-compliant with the 6m control.

Merit consideration:

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

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

Comment:

The setback breach occurs above ground level and will not impact deep soil areas.

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

Comment:

The proposal does not alter the sense of openness in the rear yard.

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

Comment:

The proposed screen is designed to mitigate the visual impact of the service structures on the roof, and will not impact the privacy of surrounding properties.

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

Comment:

The proposal maintains a rear setback that is compatible with the predominant setbacks.

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

Comment:

The proposal will not give rise to adverse privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D3 Noise

A condition is imposed to ensure compliance with this control.

D7 Views

The proposed screen structure, 5.2m in length and 1.5m in height, is not anticipated to result in adverse view impacts from surrounding properties, noting that no objections relating to view loss were received in response to the notification of the application.

D9 Building Bulk

The proposed screen is located centrally within the roof level and incorporates varied materials and finishes. Given its limited length and compliant height, the screen will not contribute excessive additional building bulk.

D11 Roofs

The amended proposal minimises the services equipment to be located on the roof, being limited to solar evacuated tubes and an irrigation system. The proposed screen ensures that the equipment will not detract from the appearance of the roof. As such, the proposal is consistent with the provisions of the control.

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. Mod2021/0832 for Modification of Development Consent DA2015/1258 granted for demolition works and the construction of a dwelling house, secondary dwelling, garage and swimming pool on land at Lot 3 DP 11737,62 Evans Street, FRESHWATER, 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
DA07 Roof Level	Rev. E, 17 February 2022	SpaceOut Studio
DA08 South Elevation	Rev. G, 17 February 2022	SpaceOut Studio
DA09 East Elevation	Rev. G, 17 February 2022	SpaceOut Studio
DA10 West Elevation	Rev. G, 17 February 2022	SpaceOut Studio

DA11 North Elevation	Rev. F, 17 February 2022	SpaceOut Studio
DA12 Section AA	Rev. F, 17 February 2022	SpaceOut Studio
DA13 Section BB	Rev. F, 17 February 2022	SpaceOut Studio
DA14 Section CC	Rev. E, 17 February 2022	SpaceOut Studio

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

B. Add Condition 37. Service / Plant Equipment to read as follows:

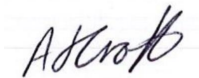
37. Service / Plant Equipment

Any service or plant equipment, including air conditioning units, shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

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

Signed



Adam Croft, Planner

The application is determined on 03/03/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments