

REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 22 April 2014

99 Ocean Street Narrabeen - Modification of Development Consent DA2009/1679 granted for Demolition works and Construction of a building containing two (2) dwellings, including front fencing.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2013/0226
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Responsible Officer:	Kevin Short
Land to be developed (Address):	Lot A DP 368605 , 99 Ocean Street NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2009/1679 granted for Demolition works and Construction of a building containing two (2) dwellings, including front fencing.
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Warringah Council Application Determination Panel
Land and Environment Court Action:	No
Owner:	Carmelo D'Amore
Applicant:	Carmelo D'Amore

Application lodged:	18/11/2013
Application Type:	Local
State Reporting Category:	Residential - New multi unit
Notified:	10/12/2013 to 10/01/2014
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	9
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot A DP 368605 , 99 Ocean Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site is rectangular in shape and located on the corner of Ocean Street (primary) and Waterloo Street (secondary street). Collaroy Beach is located approximately 70m to the east from the rear eastern boundary of the site.</p> <p>The site has a combined area of 511m² and currently accommodates a substantially completed two storey attached dual occupancy development which was approved under DA2009/1679.</p> <p>The subject site and adjoining sites on the eastern side of Ocean Street are located within the R2 Low Density Residential zone. One and two storey dwelling houses of varying age, style and scale in landscaped settings, interspersed by apartment style development, characterise the eastern side of Ocean Street.</p> <p>On the opposite and western side of Ocean Street are within the R3 Medium Density Residential zone and is intersected by the B2 Local Retail zone which extends down Waterloo Street. This area is generally characterised by a mixture of developments comprising three and four storey apartment style buildings, shop top housing developments, a school and nursing home.</p> <p>Topographically, the site is relatively flat with no unique landforms or environmental features. Landscaped open space</p>

on the site is characterised by grass lawn areas, shrubs and small size canopy trees.

Vehicular access to each dwelling is provided individually from Waterloo and Ocean Street, respectively.

Map:



SITE HISTORY

Development Application DA2009/1679

DA2009/1679 for Demolition works and construction of a building containing two (2) dwellings, including front fencing was approved on 10 February 2010. The attached dual occupancy has been substantially completed.

Specifically, the dual occupancy comprises the following:

- construction of a building containing two dwellings, comprising a ground floor dwelling and first floor dwelling
- 1.5m high fence on both street frontages
- extensive landscape works within all setback areas comprising grassed areas, landscape timber slatted walls, and aluminium gates at the pedestrian access and driveway
- internal lift
- roof top terrace with access restricted to the first floor dwelling
- single carport at the eastern setback area accessed from Waterloo Street
- double garage accessed from Ocean Street.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent No.DA2009/1679 in accordance with the provisions of Section 96 (1A) of the Environmental Planning and Assessment Act 1979. DA2009/1679 for Demolition works and construction of a building containing two (2) dwellings, including front fencing was approved on 10 February 2010. The attached dual occupancy has been substantially completed.

Specifically, the modified proposal seeks the following amendments to each dwelling contained within the attached dual occupancy:

Dwelling 1 - Ground Floor Level

- new north facing laundry window
- replacement of the carport 'flat' roof with a curved roof form (to match proposed roof top terrace terrace shade structure)

Dwelling 2 - First Floor and Roof Top Terrace Level

- reduced parapet wall height by 0.8m, from 7.6m to 6.8m (RL 16.30)
- 'Dulux silkwork' colour, being mid grey in tone, for the north facing external wall
- reconfiguration to roof top terrace including the location of the balustrade brick wall
- construction of a roof top level shade cover with a curved roof form with dimensions 4.4m x 6.0m
- new north facing ensuite window.

No other changes are proposed by the modification application.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are: 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 DA2009/1679, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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 DA2009/1679.
(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, as the case may be.	See discussion on "Public Exhibition" in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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.</p> <p><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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. No Additional information was requested.</p> <p><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.</p> <p><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 matter has been addressed via a condition in the original consent.</p> <p><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.</p> <p><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.</p> <p><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</p>

Section 79C 'Matters for Consideration'	Comments
	issue of a Construction Certificate. This Clause is not relevant to this application.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- **Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?**

Section 106 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of DA2009/1679 which reveals that the subject building

was approved on 10 February 2010, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building was lawfully approved by Council on 10 February 2010, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Works for the approved building have commenced and the building is substantially completed. Therefore, the consent has not lapsed.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Conclusion

The use has been approved under a previous EPI (WLEP 2000) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011).

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
David Ernest Head	3 Waterloo Street NARRABEEN NSW 2101
Maged Girgis	11 Waterloo Street NARRABEEN NSW 2101
Marilyn Farley	4/97 Ocean Street NARRABEEN NSW 2101
Justin Andrew Raynal	3 / 98 - 100 Ocean Street NARRABEEN NSW 2101
Shayne Stead Heidi Stead	98 - 100 Ocean Street NARRABEEN NSW 2101
Robert John Mesker	2 / 98 - 100 Ocean Street NARRABEEN NSW 2101
Rosalie Mary Alexander	24 Westmoreland Avenue COLLAROY NSW 2097

Name:	Address:
Patrick Joseph Alexander	C/- Varney'S The Professionals Po Box 169 DEE WHY NSW 2099
Scott Douglas Leney	7 / 98 - 100 Ocean Street NARRABEEN NSW 2101

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

- Non-compliant building height (roof top terrace shade cloth)
- Loss of views
- Overshadowing between properties
- Overlooking between properties
- Adverse noise impacts
- Loss of property Values
- Timing of lodgement of the application

The matters raised within the submissions are addressed as follows:

- **Non-compliant building height (roof top terrace shade cloth)**

Concern has been raised in submissions that the height of the roof top shade structure exceeds the maximum 8.5m height control under WLEP 2011 and will generate adverse impacts on the character of the streetscape.

Comment: This matter has been addressed in detail in the report under section 4.3 - Height of Buildings of WLEP 2011. In summary, the assessment has found that the roof top terrace shade structure has a maximum height of 9.4m which does not comply with the maximum 8.5m Building Height control of WLEP 2011.

However, the non-compliance has been supported under a 4.6 - Exceptions to Development Standard of WLEP 2011 and justified on the basis that the shade structure is constructed of open and light weight materials and will not generate adverse amenity impacts on adjoining and surrounding surrounding properties, including view loss, overlooking, overshadowing and visual outlook impacts.

Additionally, the location of the shade structure is sufficiently setback from all sides of the roof top level so that it will not have the visual effect of a third storey, particularly when viewed from Waterloo Street or Ocean Street. In this regard, the resultant built form will have an acceptable impact on the streetscape and continue to provide a bulk and scale commensurate with that of the existing surrounding development of the locality.

Based on the above, the concerns relating to the height of the shade structure and streetscape impacts do not carry determining weight and do not warrant the redesign or refusal of the application.

- **Loss of views**

Concern has been raised in submissions that the proposed development will cause view loss and adversely impact on the outlook vista from individual units located at the apartment building at No.98 - 100 Ocean Street (opposite the site).

Comment: The impact of the proposed development on the available views of adjoining and surrounding properties, including No.98 - 100 Ocean Street and No.11 - 21 Waterloo Street, are assessed under WDCP - D7 Views.

In summary, the extent of view loss to adjoining and surrounding properties was assessed as being acceptable. In fact, it was found that the views from individual units located at No.98 - 100 Ocean Street would not be impacted on by the proposed roof top terrace shade structure.

This conclusion is based on the proposal being assessed as being consistent with the four step assessment of the view sharing principle outlined within the Land and Environment Court Case Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140.

Based on the above, it is concluded that the proposed development will have a reasonable impact on the available views from No.198 - 100 Ocean Street and adjoining and surrounding properties. Therefore, the concerns raised in relation to view loss do not warrant refusal or redesign of the application.

- **Overshadowing between properties**

Concern has been raised in submissions that the proposed development will cause overshadowing to adjoining properties and loss of morning sun, including Nos.97 and 98 - 100 Ocean Street.

Comment: The submitted shadow diagrams with the modification application show that proposed development will not result in an unreasonable amount of overshadowing to the private open spaces and living areas of the adjoining properties, including Nos.97 and 98 - 100 Ocean Street.

Further, as discussed in the WDCP section of the report, the proposal satisfies the requirements of Clause D6 - Access to Sunlight control as it will not result in an unreasonable level of overshadowing of other adjoining and surrounding properties.

It is also noted that the submitted shadow diagrams and plans have been certified as being correct by the Applicant.

Based on the above, the concerns raised in relation to overshadowing do not carry a determining weight and do not warrant further amendments to the design or refusal of the application.

- **Overlooking between properties**

Concern has been raised in submissions that the proposed modifications to the approved development will enable direct overlooking into the private open spaces and internal living rooms of the occupants at Nos.97 and 98 - 100 Ocean Street.

Comment: This matter has been addressed in detail in this report under the WDCP Clause D8 - Privacy section. In summary, it is concluded that the development, as modified, will maintain privacy between adjoining and surrounding properties subject to a condition contained in the Recommendation for the eastern setback of the roof top terrace to be 2.64m, measured from the eastern outer edge of the first floor level.

The intent of this condition is to prevent opportunities for close and direct overlooking from the roof top terrace of the private open space area located within the rear southern setback of the adjoining property to the south, No.2 Waterloo Street.

With regard to the remaining components of the modification, including the ground floor laundry window of Dwelling 1, the first floor ensuite window of Dwelling 2 and the reconfigured roof top terrace, adequate spatial separation and the relative height of the roof top terrace will prevent close and direct overlooking of adjoining and surrounding properties.

Based on the above, the concerns relating to privacy do not carry determining weight and do not warrant the refusal of the application.

- **Adverse noise impacts**

Concern has been raised in submissions that the noise generated by the future occupants of the expanded roof top terrace will diminish the acoustic amenity of adjoining properties.

Comment: Use of the roof top terrace is restricted to the occupants of Dwelling 2 only, and therefore, its residential use is not expected to result in an unreasonable level of noise emissions on the occupants of adjoining residential buildings.

In addition, the roof top terrace is satisfactorily setback for the outer edges of the dwelling which will also assist to minimise any noise generated from this area.

Further, the proposed development has been found to satisfy the requirements of Clause 48 – Noise.

Based on the above, the concerns relating to noise impacts do not carry determining weight and do not warrant the redesign or refusal of the application.

- **Loss of property values**

Concern has been raised in submissions that the development will result in a loss of property values.

Comment: The value of property is not a matter which can be considered under the planning provisions of the Environmental Planning and Assessment Act, 1979. Therefore, this matter does not constitute a valid reason for refusal.

- **Timing of lodgement of the application**

Concern has been raised in submissions that Council's 'approval' process is being 'cynically exploited' given the timing of lodgement of the application and that no objections were lodged to the original application.

Comment: The modification application was lodged 18 November 2013 and notified for a period of one month, from 10 December 2013 to 10 January 2014 in accordance with the notification requirements of WDCP.

Further, all submissions to the application, including those submitted after 10 January 2014, have been considered in the assessment of the modification application.

Based on the above, the concerns relating to the timing of the lodgement of the application do not carry determining weight.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Natural Environment (Biodiversity)	The application was referred to Council's Natural Environment (Biodiversity) Officer for comment and no objection was raised to the proposed development.
Natural Environment (Coastal)	The application was referred to Council's Natural Environment (Coastal) Officer for comment and no objection was raised to the proposed development.

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

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 71 - Coastal Protection

The modification application does not require any alterations to the approved built form which was found to be acceptable against all the relevant provisions of the SEPP. On this basis, the proposal, as modified, is

also deemed acceptable against the requirements of the SEPP.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environment Plan 2011

Is the development permissible?	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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m: top of balustrade on roof top terrace	9.4m (roof top terrace shade structure)	10.5% (0.9m)	No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

Requirement:	8.5m
Proposed:	9.4m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	10.6% (0.9m)

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

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

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

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

Comment:

The area of non-compliance is confined to the upper (0.9m) portion of the shade structure located at the western end of the roof top level terrace. The dual occupancy is two storeys in height with a maximum height of 8.2m. The dimensions of the shade structure are 4.4m x 6.0m with a curved PVC tensile roof form.

No external walls are proposed for the shade cloth and therefore it will be an open style structure made of lightweight materials.

Having regard to the above, the shade structure will not have the visual effect of a third storey above the existing two storey dual occupancy development nor contribute any unacceptable additional bulk to the approved development.

Additionally, the eastern side of Ocean Street is situated within an established low density residential area and is zoned as R2 Low Density Residential. Two storey dwelling houses, interspersed by apartment style housing, characterise this side of the street. As such, the development will provide a bulk and scale commensurate and compatible with that of the existing surrounding development on the eastern side of Ocean Street.

Further, the opposite and western side of Ocean Street is located within the R3 Medium Density Residential zone and is intersected by the B2 Local Retail zone which extends down Waterloo Street. This area is generally characterised by a mixture of developments comprising three storey apartment style buildings and shop top housing developments, interspersed by one and two storey dwelling houses. As such, the development will also provide a bulk and scale commensurate and compatible with that of the existing surrounding development on the western side of Ocean Street.

Based on the above, the development will continue to provide a bulk and scale commensurate and compatible with that of the existing surrounding development of the immediate and surrounding area.

The proposal satisfies the objective.

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

Comment:

As described above, the shade structure is an open design and constructed of light weight materials (ie. PVC tensile), and therefore, it will not contribute unacceptable bulk and scale to the approved dual occupancy development which is articulated with recessive building elements, appropriately considered façade fenestration and materials and finishes.

Additionally, the proposed modification to the approved development has been assessed as being consistent with the requirements of the following WDCP controls:

- D6 Access to Sunlight
- D7 Views
- D8 Privacy.

Having regard to the above, the modified proposal will have an acceptable impact on the amenity of adjoining properties, including visual outlook impact, disruption of views, loss of privacy and loss of solar access.

The proposal satisfies the objective.

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

Comment:

The proposed shade structure is constructed of open and light weight materials and is to be erected at the western end of the roof top level terrace. On this basis, it will have negligible adverse impact of

development on the scenic quality of Warringah's coastal and bush environments,

The proposal satisfies the objective.

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

Comment:

The visual impact of the development when viewed from public places will be acceptable given the following:

- the shade structure is an open type structure constructed of light weight materials and has a relatively minor area of 26.4m²
- overall, the resultant building will provide a bulk and scale commensurate and compatible with that of the existing surrounding development of the immediate and surrounding area
- the area of non-compliance will have an acceptable impact on the scenic quality of Warringah's coastal and bush environments

The proposal satisfies the objective.

What are the underlying objectives of the zone?

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

As detailed in the WLEP 2011 Section of the report, the proposal has been assessed as being consistent with the objectives of the zone.

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

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

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

Comment:

In summary, the area of non-compliance is limited to the upper portion of the shade structure located above an uncovered roof top terrace. It would be unreasonable not to expect a modest shade structure to be erected above the terrace to protect its occupants from direct sunlight.

As noted previously in the report, the proposed shade structure has a maximum height of 2.46m above the roof top terrace, is constructed of open and light weight materials and has a relatively minor area of 26.4m².

Additionally, the maximum height of the roof top terrace is measured at 8.2m which is substantially less

than the 8.5m maximum height requirement of the WLEP. On this basis, the shade structure is considered 'modest' and will not cause the visual appearance of the dual occupancy to be excessive or unacceptable, particularly when viewed from adjoining properties and Ocean Street and Waterloo Street.

On this basis, an appropriate degree of flexibility should be applied for this development.

The proposal satisfies the objective.

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

Comment:

Enforcing compliance with the numerical standard in this instance would not achieve a better planning outcome as the non-complying elements (ie. curved roof form and pier beam) are satisfactorily articulated and do not detract from the architectural form of the dual occupancy.

The proposal satisfies the objective.

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

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

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

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

Comment:

In accordance with the requirements described above, the Applicant has provided a written request to vary the development standard.

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

(a) the consent authority is satisfied that:

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

Comment:

In accordance with the requirements described above, the Applicant has provided a written request to vary the development standard.

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

Comment:

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

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

Comment:

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

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	N/A	6.2m	Yes
B3 Side Boundary Envelope	4m	east elevation: contained within projected building envelope south elevation: minor non-compliance up to 0.5m	no new areas of non-compliance along both elevations	No (as approved)
B5 Side Boundary Setbacks	0.9m	<u>east elevation</u> carport: 3.4m dwelling: 6.457m <u>south elevation</u> varying setbacks from 0.9m to 2.390m	no change to approved setbacks	Yes (as approved)
B7 Front Boundary Setbacks	6.5m (Ocean Street) 3.5m (Waterloo)	<u>Ocean Street</u> dwelling: varying setbacks from 6.0m to 6.9m	no change to approved setbacks	No (as approved)

	Street)	<u>Waterloo Street</u> varying setbacks from 3.0m to 4.83m		
B9 Rear Boundary Setbacks	6m	N/A (corner allotment)	N/A	N/A
D1 Landscaped Open Space and Bushland Setting (LOS)	40%	40% (205m ²)	no change to approved amount of LOS	Yes (as approved)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1 Wall Heights	Yes	Yes
Side Setbacks - R2	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
Front Boundary Setbacks - R2	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
Rear Boundary Setbacks - R2	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D5 Orientation and Energy Efficiency	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E9 Coastline Hazard	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D7 Views

Several submissions were received from individual unit occupiers at No.98 - 100 Ocean Street which raised concerns that the development would obstruct their available views. The submissions do not provide details as to what view would be impacted on.

Accordingly, a site inspection of Unit 7 No.98 - 100 Ocean Street occurred as well as the road reserves of adjoining and surrounding properties, including No.11 - 21 Waterloo Street.

In summary, it is concluded that the proposal will not unreasonably affect the views of adjoining and surrounding properties. In determining the extent of potential view loss to the adjoining property, the four (4) steps within the view sharing planning principle outlined in the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, were considered and are discussed below:

With regard to the consideration for a variation, 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:

The nature of the views to be affected are partial and distant views of the Long Reef Head water/land interface and the Pacific Ocean. These views are considered of low to moderate value.

Note: The highly valued land/water interface views of Narrabeen Beach and Pacific Ocean will not be affected by the proposed development, including the roof top terrace shade structure and carport roof. Accordingly, there is no further assessment to be carried out in relation to this view.

Similarly, the shade structure will have a marginal impact on outlook vistas, and not the views obtained from individual units located on the western side of Ocean Street, including No.98 - 100 Ocean Street. The existing and approved dual occupancy development blocks available views from these properties. Accordingly, there is no further assessment to be carried out in relation to this view.

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:

These views are available from the second and third floor level residential units located at No.98 - 100 Ocean Street. These views are obtained from east and west facing internal and external living rooms in a standing and sitting position.

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:

The modifications to the carport roof form and provision of a roof top terrace shade structure will have nil to negligible impact on the views available from the second and third floor level units at No.98 - 100 Ocean 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:

Lowering the height of the shade structure or carport roof or changing the roof form from a curved roof to a flat roof would not result in any tangible improvements to the views available from adjoining and surrounding properties, including No.11 - 21 Waterloo Street and No.98 - 100 Ocean Street .

Having regard to the above, the extent of the view loss impact on adjoining and surrounding properties is deemed acceptable and reasonable with regard to the requirements of Clause D7 – View Sharing.

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

D8 Privacy

In relation to privacy, the modification proposal seeks to provide two new north facing windows and reconfigure and expand the area of the roof top terrace. The following provides an assessment of the development modification against the privacy requirements of the control on neighbouring properties.

No.9 and 7 Waterloo Street (northern side of Waterloo Street)

The proposed windows relate to an ensuite and laundry and are north facing overlooking Waterloo Street. Accordingly, there are no privacy impacts to consider.

Similarly, the roof top terrace overlooks Waterloo Street, and therefore, there are no privacy impacts to consider.

No.98 - 100 and 96 Ocean Street (western side of Ocean Street)

The proposed windows relate to an ensuite and laundry and are north facing overlooking Waterloo Street. Accordingly, there are no privacy impacts to consider.

Similarly, the roof top terrace overlooks Ocean Street, and therefore, there are no privacy impacts to consider.

No.97 Ocean Street (adjacent to the southern boundary)

The proposed windows relate to an ensuite and laundry and are north facing overlooking Waterloo Street. Accordingly, there are no privacy impacts to consider.

The roof top terrace is setback 2.29m from the southern edge of the first floor level. Therefore, the line of sight from persons using the roof top terrace would overlook the roof only and not the northern elevation windows or private open space which is located within the front western portion of the site.

No.2 Waterloo Street (adjacent to rear eastern boundary)

The proposed windows relate to an ensuite and laundry and are north facing overlooking Waterloo Street. Accordingly, there are no privacy impacts to consider from these windows.

The modification application seeks to decrease the eastern setback of the roof top terrace to the eastern outer edge of the first floor by 2.64m, from 2.64m to nil.

It is considered that the increase setback proposed for this portion of the roof top terrace would enable overlooking and casual surveillance of the private open space area which is located within the rear southern setback of the property at No.2 Waterloo Street.

Accordingly, a condition has been included in the Recommendation for the eastern setback of the roof top terrace to be 2.64m, measured from the eastern outer edge of the first floor level. This setback is the same setback approved in the original development.

Additionally, the area of the roof top terrace is expansive and the condition recommended would not lessen its function or amenity.

Subject to this condition, it is considered that direct and close overlooking from this area of the roof top terrace of the private open space area of the adjoining property would be prevented.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 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 Modification Application No. Mod2013/0226 for Modification of Development Consent DA2009/1679 granted for Demolition works and Construction of a building containing two (2) dwellings, including front fencing. on land at Lot A DP 368605,99 Ocean Street, NARRABEEN, subject to the conditions printed below:

A. Add Condition No.1B - 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
AP01 Issue A	Nov 13	Mosca Pserras Architects Pty Ltd
AP02 Issue A	Nov 13	Mosca Pserras Architects Pty Ltd
AP03 Issue A	Nov 13	Mosca Pserras Architects Pty Ltd
AP04 Issue A	Nov 13	Mosca Pserras Architects Pty Ltd
AP05 Issue A	Nov 13	Mosca Pserras Architects Pty Ltd
AP07 Issue A	Nov 13	Mosca Pserras Architects Pty Ltd

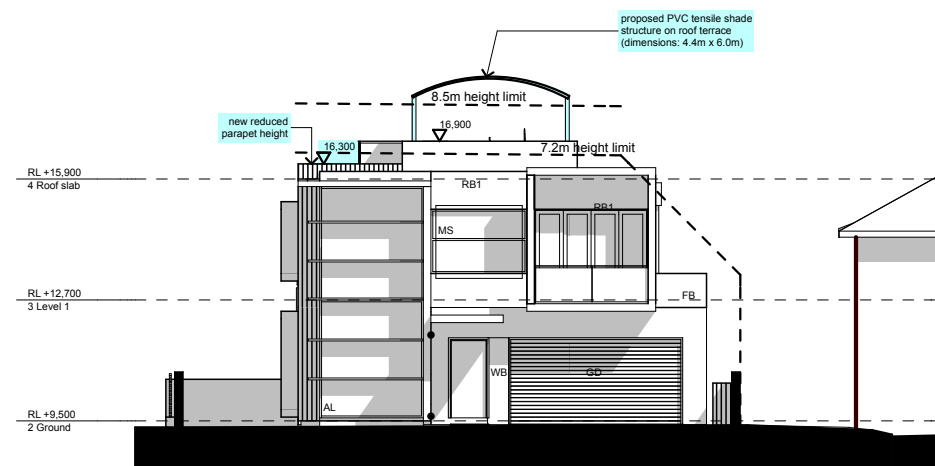
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition 10B - Modification to Roof Top Terrace

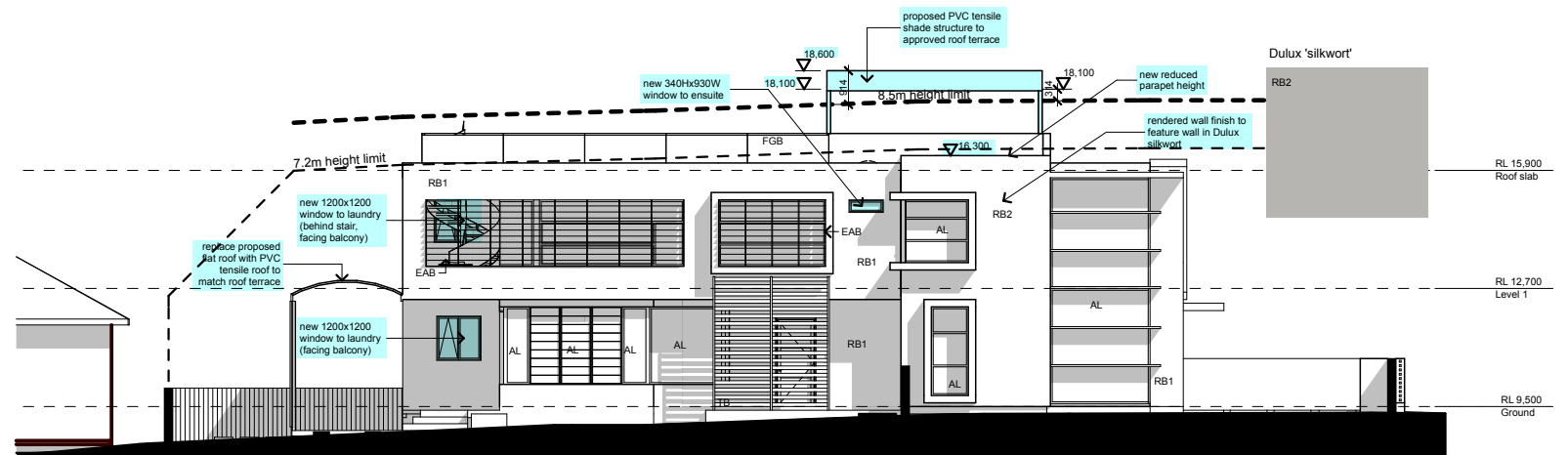
The eastern edge of the roof top terrace is to be amended so that it has a minimum eastern setback of 2.64m, measured from the eastern edge of the dwelling (first floor level), as shown on the approved roof plan.

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

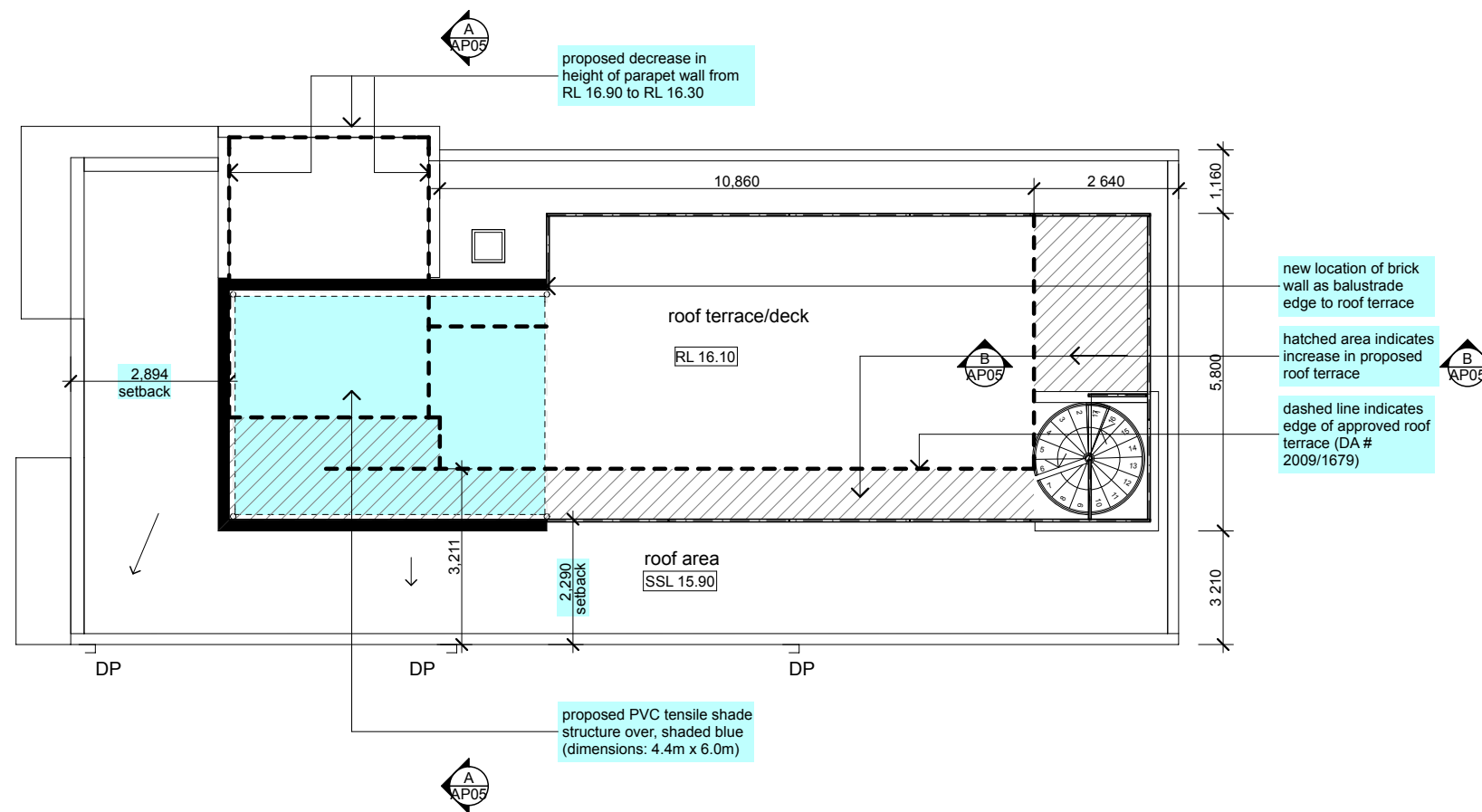
Reason: In order to maintain view sharing to the adjoining property.



Ocean St Elevation (west)



Waterloo St Elevation (north)



Roof Plan

Notes

- this drawing is copyright and the property of the author, and must not be retained, copied or used without the authority of mosca pserras architects.
- larger scale drawings and written dimensions take preference.
- do not scale from drawing
- all dimensions to be checked on site before commencement of work.
- all discrepancies to be brought to the attention of the author.

A Section 96 Application mv Nov 13
 issue details by date
 amendments

project
PROPOSED SECTION 96 APPLICATION
 location
99 OCEAN STREET
NARRABEEN

client
Mr Charlie D'Amore
 drawing title
Notification Plan

date JULY 2009	checked	project arch GK	drawn MV
scale none	no 09005 AP07	issue A	

m p a
 mosca pserras architects

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