

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0095
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<b>Responsible Officer:</b>	Ashley Warnest
<b>Land to be developed (Address):</b>	Lot 1 DP 27239, 88 Frenchs Forest Road SEAFORTH NSW 2092
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0800 granted for construction of a swimming pool carport and associated works
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	John Fitzgerald Codner Gemma Louise Codner
<b>Applicant:</b>	CDC Approvals

<b>Application Lodged:</b>	06/03/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	18/03/2020 to 01/04/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify development consent No. DA2019/0800 for the construction of a swimming pool, carport and associated works. The proposed modification seeks to delete imposed condition 7a requiring the re-positioning of the carport and modify condition 4 to reflect the updated cost of works.

### 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

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 27239 , 88 Frenchs Forest Road SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) corner allotment with a primary frontage located on the northern side of Frenches Forest Road.</p> <p>The site is regular in shape corner allotment with a primary frontage of 9.1m along Frenches Forest Road and a secondary frontage of 32m along Mountauban Avenue.</p> <p>The site has a surveyed area of 569.1m<sup>2</sup> with a slope of 10.7% that falls from the south-west to the -north-east.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey residential dwelling.</p> <p>The site the front of the site, along Frenches Forest Road contains two 10m-12m tall trees and two 3m tall. Two 8m tall trees are located within Council's road reserve.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Adjoining and surrounding development is characterised by similar one and two storey residential dwelling houses.</p>

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:

- Development Application - DA2019/0800  
Construction of a swimming pool, carport and associated works. Determined 18/10/2019
- Complying Development Certificate - CDC2018/0626  
Construction of new two storey dwelling house. Issued 02/07/2018 by Private Certifier (Accredited Building Certifiers)

## 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 DA2019/0800, 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
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The level of landscaping is unchanged</li> <li>• Does not result in an increase in bulk and scale</li> </ul>
<p>(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</p>	<p>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 DA2019/0800 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The development remains largely unaltered in appearance, setback, height and scale</li> <li>• No additional impact will arise as a result of the changes</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.</p>
<p>(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.</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>

### 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	Manly 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)	<p><u>Division 8A</u> of the EP&amp;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>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;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&amp;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&amp;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>
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	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b></p>

Section 4.15 'Matters for Consideration'	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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:
Mr Samuel James Craigen	86 Frenchs Forest Road SEAFORTH NSW 2092

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

- **Impact on privacy of the finish height of the lawn area located to the north of the dwelling**

Comment

The proposed vegetation along the eastern boundary is to have a mature height of 2m-4m this will provide sufficient screening between the elevated lawn area and the adjoining rear access of 86 Frenchs Forest Road. It is noted that the modification application only seeks approval for the re-positioning of the carport, the rear lawn does not form part of this application.

- **Location of the pool pump/filter**

Comment

A condition has been imposed for the pool pump/filter to be acoustically treated to ensure

minimal noise disturbance to adjoining residents.

- **Additional noise associated with garden feature located to the south of the dwelling**

Comment

The rectangular feature is indicated on the plans as a climbing frame. No water feature or associated pump has been approved within the front yard.

**REFERRALS**

Internal Referral Body	Comments
NECC (Development Engineering)	The applicant proposed to amend the set back requirement. Development Engineering has no comment on setback.

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 (Infrastructure) 2007**

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.

**Manly Local Environmental Plan 2013**

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

Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	3.7m (carport)	unchanged	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

**Manly Development Control Plan**

Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
4.1.4.1 Street Front Setbacks	Primary frontage - Frenchs Forest Road: Prevailing building line	N/A - no changes	unchanged	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	1.2m (based on carport height)	1m	0.5m	No
	Secondary frontage - Montauban Avenue: Prevailing setback	2.8m	unchanged	No

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	49.6%	unchanged	<b>No</b>
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	56.3%	unchanged	Yes
	3 native trees	3 trees	unchanged	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.6m or 10% of frontage	unchanged	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	in-ground	unchanged	Yes
	1m curtilage/1.5m water side/rear setback	4.8m (north) 7.6m (east)	4.3m (north) 7.6m (east)	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	unchanged	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

### Detailed Assessment

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

The proposed 0.5m northern side setback does not comply with the 1.2m requirement. As part of the previous development consent a condition was imposed for the carport to be setback a minimum 1m from the northern side boundary. The condition was imposed due to concerns with the limited spatial separation between the subject site and the adjoining property of 2 Montauban Avenue and to address the concerns raised by the residents of 2 Montauban Avenue. It is noted that no submission has been received from 2 Montauban Avenue in regards to the positioning of the carport 0.5m from the shared boundary.

The positioning of the carport will not significantly impact upon the amenity of the existing building at 2 Montauban Avenue. The outlook will not be impacted as the southern wall of 2 Montauban Avenue is a solid brick wall and the entryway is positioned on the northern side of the property. In addition, the carport is open in style minimising the bulk of the structure. There are examples of solid parking structures with nil front and side setbacks along the western side of Montauban Avenue. The eastern side of Montauban Avenue has a variety of shade structures and carports positioned along the northern boundaries with reduced side setbacks.

The proposed 0.5m northern side setback is considered reasonable and consistent with the objectives of the clause. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.5 Open Space and Landscaping**

The proposed modification will not result in a change to the previously approved open space and landscaping.

### **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;
- Manly Local Environment Plan;
- Manly 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. Mod2020/0095 for Modification of Development Consent DA2019/0800 granted for construction of a swimming pool carport and associated works on land at Lot 1 DP 27239,88 Frenchs Forest Road, SEAFORTH, subject to the conditions printed below:

#### **A. Modify Condition 4 - Policy Controls - to read as follows:**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$727.12 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act

1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$145,424.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

**B. Delete Condition 7a.**

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

**Signed**



**Ashley Warnest, Planner**

The application is determined on 21/04/2020, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**