

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2015/0098
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Responsible Officer:	Charise Chumroonridhi
Land to be developed (Address):	Lot 1 DP 236290 , 71 Ferguson Street FORESTVILLE NSW 2087
Proposed Development:	Modification of Development Consent 5003/5350 BA granted for Alterations and additions to dwelling house
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Anthony John Burns Leanne Faye Burns
Applicant:	Anthony John Burns

Application lodged:	19/05/2015
Application Type:	Local
State Reporting Category:	Residential - Alterations and additions
Notified:	28/05/2015 to 12/06/2015
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	0
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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 1 DP 236290 , 71 Ferguson Street FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Ferguson Street.</p> <p>The site is irregular in shape with a frontage of 18.6m along Ferguson Street and a depth of 44.2m. The site has a surveyed area of 699.2m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates two storey single dwelling with a swimming pool in the front yard and a carport.</p> <p>Surrounding development consists of single one to three storey dwellings in a landscaped setting. The site is opposite a National Park and Nature Reserve.</p> <p>The site has a downward slope from south to north with a fall of approximately 10 metres.</p>

Map:



SITE HISTORY

A search of Council's records revealed the following approvals:

1072/97

Approved on 7 August 1997 for a deck and pergola in the front yard.

The application is for the modification of Development Consent 1072/97 to replace the pergola rafters, extend the metal roof to the extent of the pergola and provide skylights.

PROPOSED DEVELOPMENT IN DETAIL

The applications seeks to replace the pergola rafters, extend the metal roof to the extent of the pergola and provide skylights.

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 for Development Consent No. 1072/97, 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.

Section 96(1A) - Other Modifications	Comments
(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 1072/1997.
(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.	No submissions were received in relation to this application.

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 (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) –	None applicable.

Section 79C 'Matters for Consideration'	Comments
Provisions of any planning agreement	
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>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>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989.</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>
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

Existing Use Rights are not applicable to this application.

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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No objections subject to the condition recommended in the Ausgrid Referral Response for 71 Ferguson St, Forestville.
NSW Rural Fire Service – local branch (s79BA EPAA)	No objections subject to the conditions recommended in the Bushfire Referral Response for 71 Ferguson Street Forestville NSW 2087 prepared by NSW Rural Fire Services.

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. A response was provided on 12 June 2015 advising that Ausgrid has no objections to the matter proceeding at this stage subject to the following condition:-

- The existing overhead electricity service to the premise is to be re-routed as required to ensure that adequate clearance is achieved from the proposed alterations. Refer to Section 3.5 of the Service and Installation Rules of New South Wales for the compliance requirements.

Warringah Local Environment 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	5.65m	5.75m	Nil	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
Part 6 Additional Local Provisions	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
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B5 Side Boundary Setbacks	0.9m (east)	1.95m	1.4m	Yes
	0.9m (west)	5.4	5 m	Yes
B7 Front Boundary Setbacks	6.5m	9.7m	9.25m	Yes
D1 Landscaped Open Space and Bushland Setting	40%	No Change	No Change	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	Yes
Side Setback Exceptions - R2	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
R2 - All other land in R2 Zone	Yes	Yes
Front Boundary Exceptions - R2	Yes	Yes
Front Boundary Exceptions - All Zones	Yes	Yes
Part C Siting Factors	Yes	Yes
C8 Demolition and Construction	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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
D12 Glare and Reflection	Yes	Yes
Part E The Natural Environment	Yes	Yes
E10 Landslip Risk	Yes	Yes

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. Mod2015/0098 for Modification of Development Consent 5003/5350 BA granted for Alterations and additions to dwelling house on land at Lot 1 DP 236290,71 Ferguson Street, FORESTVILLE, 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
S96-1	4 May 2015	Neil Harvey
S96-2	4 May 2015	Neil Harvey

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Referral Response for 71 Ferguson Street Forestville NSW 2087	16 June 2015	NSW Rural Fire Service

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Add Condition No.1B - Compliance with Other Department, Authority or Service Requirements to read as follows:

The development must be carried out in compliance with the following:

Other Department, Authority or Service	eServices Reference	Dated
Ausgrid	Response Ausgrid Referral	12 June 2015

(NOTE: For a copy of the above referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's. (DACPLB02)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.


Signed

Charise Chumroonridhi, Planner

The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager



















ATTACHMENT A

Notification Plan	Title	Date
 2015/144351	plans notification	21/05/2015

ATTACHMENT B

Notification Document	Title	Date
 2015/151088	Notification map	28/05/2015

ATTACHMENT C

Reference Number	Document	Date
 2015/144353	Statement Environmental Effects from CD	18/05/2015
 2015/144355	report - geotechnical from CD	18/05/2015
 2015/144349	plan large survey from CD	18/05/2015
 2015/144358	report bushfire	18/05/2015
 MOD2015/0098	71 Ferguson Street FORESTVILLE NSW 2087 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	19/05/2015
 2015/141745	DA Acknowledgement Letter - Anthony John Burns	19/05/2015
 2015/144347	application to modify a consent	21/05/2015
 2015/144348	applicant details	21/05/2015
 2015/144351	plans notification	21/05/2015
 2015/144367	plans master set merged from CD	21/05/2015
 2015/147327	File Cover	25/05/2015
 2015/147336	Referral to AUSGRID - SEPP - Infrastructure 2007	25/05/2015
 2015/147340	Referral to RFS - Local Office	25/05/2015
 2015/151086	Notification letter 7	28/05/2015
 2015/151088	Notification map	28/05/2015
 2015/151753	nsw rfs acknowledgment - Development Application Mod2015/0098 - 71 Ferguson Street Forestville NSW 2087	28/05/2015
 2015/166727	MOD2015/0098 Ausgrid referral response - 71 Ferguson Street Forestville	12/06/2015
 2015/170547	Referral Response - Rural Fire Service	16/06/2015