

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0094
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<b>Responsible Officer:</b>	Stephanie Gelder
<b>Land to be developed (Address):</b>	Lot 2 DP 245597, 103 King Street MANLY VALE NSW 2093
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1091 granted for Alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - 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>	David Anthony Worley Laura Jane Worley
<b>Applicant:</b>	David Anthony Worley

<b>Application Lodged:</b>	08/03/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	17/03/2023 to 31/03/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The prospective modifications works to DA2019/1019 comprise of the following:

- Deletion of the upper ground floor northern side extension to the dwelling house; and
- Deletion of the upper ground floor eastern extension to the dwelling house.

The retrospective modification works to DA2019/1019 comprise of the following:

- Addition of northern window in existing Bed 3; and
- Enclosure of existing northern window in existing Bed 1.

In accordance with *Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177*, the orders made by the Land and Environment Court outlined: A modification to a development consent can never retrospectively approve the carrying out of development, but can only prospectively approve the carrying out of development.

It was noted after the undertaking of a site visit that retrospective works had been undertaken to existing Bed 3 that included a northern new window, and the enclosure of the existing northern window in existing Bed 1.

It is Council's position that the unlawful retrospective works are not able to be assessed under a modification application. Therefore, in this instance, the prospective works can be assessed under this Modification Application, however the retrospective works will not be assessed as part of this Modification Application. The applicant is required to seek an alternative pathway for approval of the retrospective works. As such, a condition has been recommend to exclude the retrospective works as outlined above from this Modification Application.

## 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

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 245597 , 103 King Street MANLY VALE NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) corner allotment located on the eastern side of King Street, and the northern side of Arana Street.</p> <p>The site is irregular in shape with a primary frontage of</p>

16.62m along King Street, and a secondary frontage of 42.421m along Arana Street. The site has a surveyed area of 920.4m<sup>2</sup>.

The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a dwelling house, and secondary dwelling currently on the site.

The site slopes across the site from the north-western boundary corner upwards to the south-eastern boundary corner over approximately 5 metres.

The site contains lawn areas, plantings, and trees. There are no details of any threatened species on the subject site.

### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design. To the west on the opposite side of King Street is Manly Hydraulics Laboratory.

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:

### **DA2012/0899**

Development Application for Demolition works, alterations and additions and construction of a secondary dwelling pursuant to SEPP (ARH) 2009.

Approved on 20 September 2012.

#### **CC2014/0518**

Construction Certificate for Demolition works, alterations and additions and construction of a secondary dwelling pursuant to SEPP (ARH) 2009.

Approved on 09 October 2014 by External Certifier.

#### **FOC2016/0277**

Final Occupation Certificate for Demolition works, alterations and additions and construction of a secondary dwelling pursuant to SEPP (ARH) 2009.

Approved on 24 May 2016 by External Principal Certifier.

#### **DA2019/1091**

Development Application for Alterations and additions to a dwelling house.

Approved on 27 November 2019.

#### **CC2020/0564**

Construction Certificate for Alterations and additions to a dwelling house.

Approved on 15 June 2020 by External Certifier.

#### **APPLICATION HISTORY**

Following the preliminary assessment of the application, Council requested additional information in relation to an amended BASIX Certificate, as the provided BASIX Certificate did not include all retained windows, and doors on the modification plans. An amended BASIX Certificate was subsequently submitted. The amended BASIX Certificate did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

#### **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 DA2019/1091, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
	A consent authority may, on application being made by the applicant or any other person entitled to

Section 4.55 (2) - Other Modifications	Comments
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 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>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/1091 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed modification works comprises of deletion of a portion of the previously approved works.</li> <li>• The modification works include deletion of the upper ground floor northern side extension to the dwelling house, and deletion of the upper ground floor eastern extension to the dwelling house.</li> <li>• The consent authority is satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/1091.</li> </ul>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/1091 did not require concurrence from the relevant Minister, public authority or approval body.
(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, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period	See discussion on “Notification & Submissions Received” in this report.



Section 4.55 (2) - Other Modifications	Comments
prescribed by the regulations or provided by the development control plan, as the case may be.	

## Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an amended BASIX Certificate, as the provided BASIX Certificate did not include all retained windows, and doors on the modification plans. An amended BASIX Certificate was subsequently submitted.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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 Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the Development Application that included a certificate (prepared by Bushfire Planning Services Pty Ltd, dated 28 October 2019) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report were included as conditions of consent for the Development

Application.

As the proposed modification works include the deletion of works, the existing conditions of consent remain for the approved works.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/03/2023 to 31/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A487711\_02 dated 05 April 2023).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## **Warringah Local Environmental Plan 2011**

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

### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	5.6m	unaltered	-	Yes

### Compliance Assessment

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

## **Warringah Development Control Plan**

### Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
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B1 Wall height	7.2m	6.4m	unaltered	Yes
B3 Side Boundary Envelope	4m (North)	Within Envelope	Within Envelope	Yes
	4m (East)	Within Envelope	Within Envelope	Yes
B5 Side Boundary Setbacks	0.9m (North)	0.9m (Bedroom 1 extension) 6.4m (Balcony)	deleted unaltered	N/A Yes
	0.9m (East)	23.6m (Laundry) 27.8m (Bedroom 1 extension)	23.3m (existing) deleted	Yes N/A
B7 Front Boundary Setbacks	6.5m (King Street - Primary)	4.8-5.6m (Garage) 6.5m (Storage room & stairs)	unaltered unaltered	N/A Yes
	3.5m (Arana Street - Secondary)	3.3m (Storage room & laundry) 9.5m (Extended paving)	unaltered deleted	N/A N/A
D1 Landscaped Open Space and Bushland Setting	40% (368.2m <sup>2</sup> )	46.3% (425.9m <sup>2</sup> )	44.89% (413.2m <sup>2</sup> )	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2022

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0094 for Modification of Development Consent DA2019/1091 granted for Alterations and additions to a dwelling house on land at Lot 2 DP 245597, 103 King Street, MANLY VALE, 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
Site Plan - 1-3	December 2022	High Design
Floor Plans - 2-3	December 2022	High Design
Elevation Plans - 3-3	December 2022	High Design

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Plan - C1, Rev F	16 March 2023	Geoff Hopkins & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (No.A487711_02)	05 April 2023	Nick Gordon

#### 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.

### B. Add Condition 1B - Compliance with Other Department, Authority or Service Requirements to read as follows:

The development must be carried out in compliance with all recommendations and requirements,

excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	29 March 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**C. Add Condition 1C - Retrospective Works Excluded to read as follows:**

Despite any reference in Condition 1A, the following use and parts of the dwelling house built without approval are excluded from this Modification.

Specifically, no approval is granted or implied for the following items detailed on the Plans prepared by High Design dated December 2022 as listed in Condition 1A:

1. Addition of northern window in existing Bed 3; and
2. Enclosure of existing northern window in existing Bed 1.

Nothing in this approval implies the future use or regularisation of these works.

Reason: To ensure this modification does not provide consent for works already undertaken.

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

**Signed**



**Stephanie Gelder, Planner**

The application is determined on 05/04/2023, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**