

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                            |              |
|----------------------------|--------------|
| <b>Application Number:</b> | Mod2023/0370 |
|----------------------------|--------------|

|   |   |
|---|---|
| <b>Responsible Officer:</b>               | Jordan Howard   |
| <b>Land to be developed (Address):</b>    | Lot 12 DP 5466, 51 Surfers Parade FRESHWATER NSW 2096                                 |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2022/1991 granted for Construction of a carport |
| <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>                             | Julie Anne Reeves   |
| <b>Applicant:</b>                         | JJ Drafting Australia Pty Ltd   |

|                                  |                                  |
|----------------------------------|----------------------------------|
| <b>Application Lodged:</b>       | 07/07/2023                       |
| <b>Integrated Development:</b>   | No                               |
| <b>Designated Development:</b>   | No                               |
| <b>State Reporting Category:</b> | Refer to Development Application |
| <b>Notified:</b>                 | 14/07/2023 to 28/07/2023         |
| <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 application is seeking Modification of Development Consent DA2022/1991 granted for Construction of a carport. Specifically, the proposal comprises of:

- Planter box deleted.
- Two skylights deleted.
- Battens to garage door deleted and replaced with a solid door.
- High wall to the west to be slightly increased and low wall slightly reduced.

## ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D10 Building Colours and Materials

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 12 DP 5466 , 51 Surfers Parade FRESHWATER NSW 2096  |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one (1) allotment located on the northern side of Surfers Parade.</p> <p>The site is regular in shape with a frontage of 10.06m along Surfers Parade and a depth of 40.235m. The site has a surveyed area of 404.7m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and a swimming pool.</p> <p>The site is relatively flat, with an approximate crossfall of less than 1m.</p> <p>The site contains lawn areas and garden beds. There are no details of any threatened species on the subject site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> |

Adjoining and surrounding development is characterised by dwelling houses.

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:

- **Application CDC2018/0495** for Alterations and additions to an existing dwelling, construction of a new swimming pool and new front fence - cdc18/2484-1 - Private Building Certifiers on 11/05/2018.
- **Application CDC2018/0461** for Ancillary development on 11/05/2018.
- **Application DA2022/1991** for Construction of a carport. Approved on 16 January 2023. This modification application seeks to modify this development consent.

## 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 DA2022/1991, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55(1A) - Other Modifications   | Comments   |
|--|--|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:  |  |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and   | <p><b>Yes</b></p> <p>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 amendments are minor and unlikely to result in any environmental impact.</li> <li>• The modifications do not materially alter the quality of accommodation afforded to neighbouring properties commensurate to that of the approved consent.</li> </ul>  |
| (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>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 DA2022/1991 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The approved use remains as approved, while the approved built form, including building height, envelope, setbacks and landscaping remain unchanged, compliant or reduced in regard to what was approved under DA2022/1991.</li> </ul> |
| <p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>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</p> | <p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>  |

| Section 4.55(1A) - Other Modifications   | Comments  |
|--|---|
| of a development consent, and  |   |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | See discussion on "Notification & Submissions Received" in this report. |

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration'  | Comments   |
|---|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument   | See discussion on "Environmental Planning Instruments" in this report.   |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | There are no current draft environmental planning instruments.   |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan  | Warringah Development Control Plan applies to this proposal.   |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement   | None applicable.   |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment 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 Clause B7 Front Boundary Setbacks and Clause C3 Parking Facilities of the Warringah Development Control Plan 2011. Following discussion with the applicant, this request was withdrawn by the Assessing Officer, with no additional information received.</p> |



| Section 4.15 'Matters for Consideration'   | Comments  |
|--|---|
|  | <p>Instead, a condition is included in the recommendations of this report that will require the proposed external finishes shall match/compliment (as best it can) the colours and finishes of the existing dwelling.</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</u> and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</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><br/>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.</p> <p>(ii) <b>Social Impact</b><br/>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><br/>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 from 14/07/2023 to 28/07/2023 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

| Internal Referral Body         | Comments  |
|--------------------------------|---|
| NECC (Development Engineering) | The modification is supported, subject to retention of existing Development Engineering conditions. |

| 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 are already included within the conditions of consent of DA2022/1991 and will remain unchanged. |

## 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 (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 compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations are already included within the conditions of consent of DA2022/1991 and will remain unchanged.

## 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        | 3.4m     | 3.2m     | -           | 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 |
|----------------|-------------|----------|-----------|----------|
| B1 Wall height | 7.2m        | 3.2m     | No change | Yes      |



|   |                            |                              |           |  |
|---|----------------------------|------------------------------|-----------|--|
| B3 Side Boundary Envelope                     | East 5m                    | Inside Envelope              | No change | Yes  |
|   | West 5m                    | Inside Envelope              | No change | Yes  |
| B5 Side Boundary Setbacks                     | East 0.9m                  | 0.2m                         | No change | Yes  |
|   | West 0.9m                  | 4.5m                         | No change | Yes  |
| B7 Front Boundary Setbacks                    | 6.5m                       | 0.1m                         | No change | <b>No</b> but approved under DA2022/1991                             |
| B9 Rear Boundary Setbacks                     | 6m                         | 34.4m                        | No change | Yes  |
| D1 Landscaped Open Space and Bushland Setting | 40% (161.9m <sup>2</sup> ) | 25.3% (102.4m <sup>2</sup> ) | No change | <b>No</b> but existing and unchanged, and approved under DA2022/1991 |

#### 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   | No                           | Yes                         |
| B9 Rear Boundary Setbacks  | Yes                          | Yes                         |
| C2 Traffic, Access and Safety  | Yes                          | Yes                         |
| C3 Parking Facilities  | Yes                          | Yes                         |
| C4 Stormwater  | Yes                          | Yes                         |
| C6 Building over or adjacent to Constructed Council Drainage Easements | Yes                          | Yes                         |
| C7 Excavation and Landfill   | Yes                          | Yes                         |
| C8 Demolition and Construction   | Yes                          | Yes                         |
| C9 Waste Management  | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting                          | No                           | 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                         |

| Clause  | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| 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                         |
| D22 Conservation of Energy and Water            | Yes                          | Yes                         |
| E1 Preservation of Trees or Bushland Vegetation | Yes                          | Yes                         |
| E2 Prescribed Vegetation                        | Yes                          | Yes                         |
| E6 Retaining unique environmental features      | Yes                          | Yes                         |
| E10 Landslip Risk                               | Yes                          | Yes                         |

#### Detailed Assessment

#### **B7 Front Boundary Setbacks**

The proposed modification application does not alter the numerically non-complaint front boundary setback approved under DA2022/1991.

Further merit assessment is not required in this instance as the development was assessed to have met the objectives of the control under DA2022/1991.

#### **D1 Landscaped Open Space and Bushland Setting**

The development approved under DA2022/1991 did not involve any changes to landscaped open space, as the carport is over an existing hardstand parking space. This modification application does not include any additional impervious area or decrease to landscaped open space.

As such, the existing non-compliance will remain unchanged and further merit assessment is not required.

#### **D10 Building Colours and Materials**

To ensure the colours and finishes of the modified proposal (which includes the removal of a batten finishes to the carport door) will harmonise with the surroundings, a condition is included in the recommendations of this report that will require the proposed external finishes shall match/compliment (as best it can) the colours and finishes of the existing dwelling.

#### **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. Mod2023/0370 for Modification of Development Consent DA2022/1991 granted for Construction of a carport on land at Lot 12 DP 5466,51 Surfers Parade, FRESHWATER, subject to the conditions printed below:

## **Modification Summary**

The development consent is modified as follows:

## MODIFICATION SUMMARY TABLE

| Application Number        | Determination Date                       | Modification description   |
|---------------------------|--|--|
| PAN-347275 - Mod2023/0370 | The date of this notice of determination | <p>Modification of Development Consent DA2022/1991 granted for Construction of a carport</p> <p><u>Modified Conditions:</u></p> <p>A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation</p> <p>B. Add Condition No. 9A - External Colours and Finishes</p> |

### Modified conditions

#### **A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

| Approved Plans |                 |                             |                       |              |
|----------------|-----------------|-----------------------------|-----------------------|--------------|
| Plan Number    | Revision Number | Plan Title                  | Drawn By              | Date of Plan |
| MOD.01         | B               | Site Analysis Plan          | JJ Drafting Australia | 16 June 2023 |
| MOD.04         | B               | Proposed Carport Floor Plan | JJ Drafting Australia | 16 June 2023 |
| MOD.05         | B               | Proposed Elevations         | JJ Drafting Australia | 16 June 2023 |
| MOD.06         | B               | Section                     | JJ Drafting Australia | 16 June 2023 |

| Approved Reports and Documentation |                |                               |                  |
|------------------------------------|----------------|-------------------------------|------------------|
| Document Title                     | Version Number | Prepared By                   | Date of Document |
| Waste Management Plan              | -              | JJ Drafting Australia Pty Ltd | 2 November 2022  |

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

#### **B. Add Condition No. 9A - External Colours and Finishes, to read as follows:**

The proposed external finishes shall match/compliment (as best it can) the colours and finishes of the existing dwelling so as to achieve visual continuity.

Reason: To ensure minimal impact upon amenity of adjoining properties and visual continuity of the existing dwelling.

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

**Signed**



**Jordan Howard, Planner**

The application is determined on 26/09/2023, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**