

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2015/0283
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 DP 586163, 4 Notting Lane COTTAGE POINT NSW 2084
Proposed Development:	Modification of Development Consent DA2013/0677 granted for alterations and additions to a dwelling house
Zoning:	LEP - Land zoned E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Garry David Sexton Dawn Marjorie Sexton
Applicant:	Garry David Sexton

Application lodged:	16/12/2015
Application Type:	Local
State Reporting Category:	Residential - Alterations and additions
Notified:	11/01/2016 to 27/01/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	1
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:

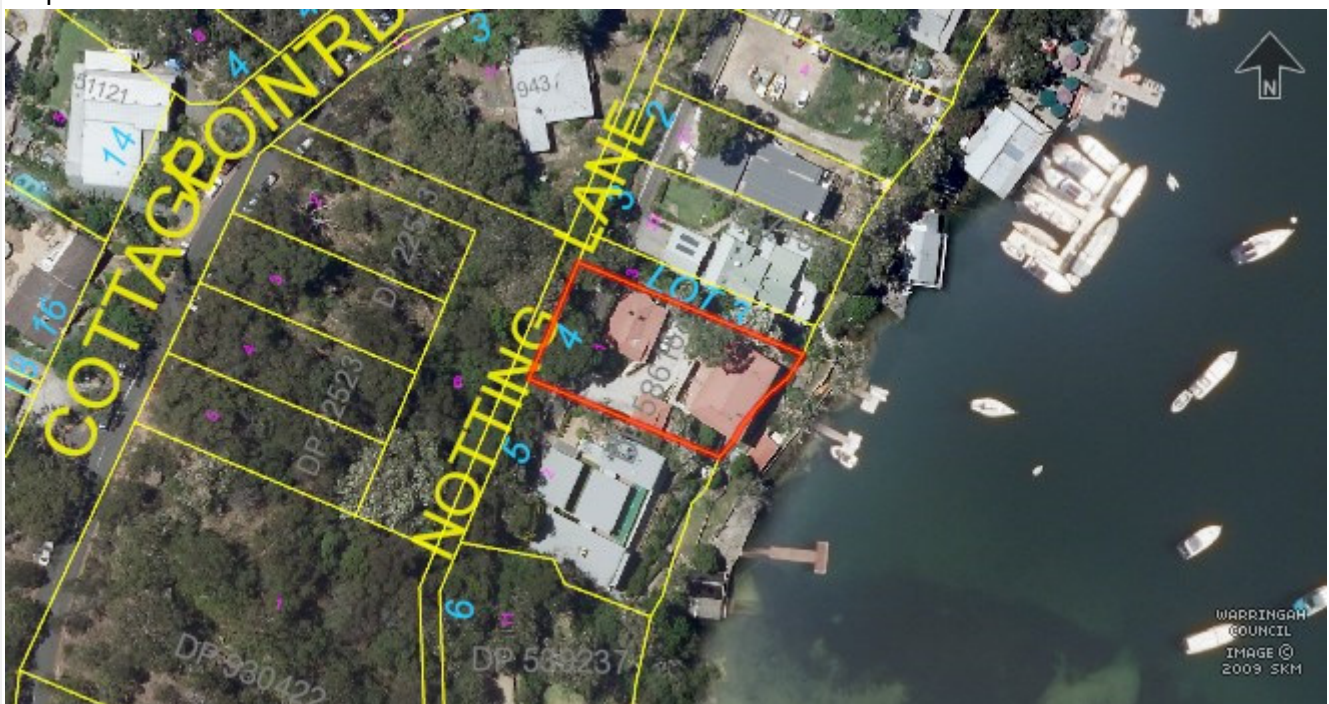
- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts 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

SITE DESCRIPTION

Property Description:	Lot 1 DP 586163 , 4 Notting Lane COTTAGE POINT NSW 2084
Detailed Site Description:	<p>The block is located on the eastern, lower side of Notting Lane and slopes steeply from the lane to the water. The site has a total area of 1098 square metres (sqm) with a frontage of approximately 25 metres (m) to the street and to the water. The site contains an existing two storey house built in the centre of the block, and a small detached cottage built close to the frontage with Notting Lane. There is also a detached garage, located between the house and the lane, and a boatshed close to the water. The land is accessible by road from the eastern side of Notting Lane, which is a narrow road leading south from the end of Cottage Point Road. The site has an easterly outlook toward Coal and Candle estuary and the surrounding National Park land beyond.</p> <p>Cottage Point is a small community of village development within the Ku-ring-gai Chase National Park, comprising dwelling houses, most of which have waterfront access, together with a mix of other compatible uses (including restaurant, tourist accommodation, marina, general store, rural fire service and the like).</p>

Map:



SITE HISTORY

Development Application No. DA2013/0677 for alterations and additions was approved by Council on

12 September 2013.

Development Application No.DA2001/1155 for the construction of a new dwelling, garage and boathouse and demolition of an existing dwelling was approved by Council on 10 April 2002.

Prior to this Council records dated 19 May 1983 acknowledge that there were two (2) smaller dwellings situated on site benefit from existing use rights, and had been approved in 1946 and 1947. The structures are shown on survey plan 40191-6, dated 12/12/75, by Rygate & West Surveyors.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves a S96 (1A) modification of consent to DA2013/0677, for alterations and additions to a dwelling house, to provide a new fence screening structure along the northern side of the property. Specifically this includes:

- The boundary fence screen structure to be constructed within Lot 1 DP 586163 and constructed of a mix of timber (Merbau) and "Modak Board". Part of the existing fence to remain is sandstone.
- The fence transitions down the site along the boundary to respond to the fall in topography and assist to maintain privacy and reduce opportunities for overlooking.

(Note: Part of the subject fencing works have already been undertaken, however pursuant to *Windy Dropdown Pty Ltd v Warringah Council* (2000) [NSWLEC 240] Talbot J held that the provisions of section 102 of the *Environmental Planning and Assessment Act 1979* could be used to modify a development consent where the works the subject of the modification application had already been carried out. However, where such works may have already been completed without development consent those [modified] construction works cannot receive a retrospective Construction Certificate, but will be subject to a Building Certificate assessment by Council).

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2013/0677, in full, with amendments detailed and assessed as follows:

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

Section 96(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2013/0677
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Public Exhibition" in this report.

Section 79C Assessment

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

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (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 'Matters for Consideration'	Comments
Section 79C (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to the fence modification and has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to the fence modification and has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent/This clause is not relevant to this application.</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	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringham Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 79C 'Matters for Consideration'	Comments
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development subject to conditions
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

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

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

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

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

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

This necessarily requires the following questions to be answered.

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

Comment:

The two existing dwellings on site were approved in 1946 and 1947, prior to the coming into force of *Warringah Local Environmental Plan 2011* on 9 December 2011. A search of Council records did not reveal these previous approvals, however a letter from Council was found which acknowledged that existing use rights applied to the to existing dwellings on site. The modification works is ancillary development to the structures that have existing use rights.

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

Comment:

The use of the buildings were lawfully approved by Council in 1946 and 1947, prior to the coming into force of *Warringah Local Environmental Plan 2011* on 9 December 2011. Correspondence from Council in 1983 acknowledged that the two existing dwellings on site benefited from existing use rights. The fencing work is a modification to DA2013/0677 for alterations and additions to a dwelling house and therefore existing use rights are applicable to the parent development application being modified.

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

Comment:

The site has operated as an existing dual occupancy since the 1940s and works under DA2013/0677 have been carried out within the consent period.

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

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed fencing changes are minor in the context of the site and existing development and ancillary to the works approved under DA2013/0677. The modification work will not result in any

unreasonable impacts on the area.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The fencing changes will not have an unreasonable impact on the overall bulk and scale of the existing development on site.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposal does not cause any unreasonable impacts on adjoining land, subject to conditions. It should be noted that particular issues relating costs and works for dividing fences are administered under the *Dividing Fences Act 1991* and where there may be a dispute between neighbours these issues are resolved through the Local Court or Community Justice Centre.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

Internal amenity will be slightly improved by the new fencing work to enhance privacy issues between the side access along the boundary and internal privacy to the dwellings at No.4 Notting Lane (Lot 1).

Conclusion

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

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr David Ian Carlyle Holmes	13 Pacific Parade MANLY NSW 2095

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

- Fence height
- Fence material
- Fence cladding
- Survey information

The matters raised within the submissions are addressed as follows:

- *Concern with fence height is now generally satisfactory subject to the amended plans*
Comment:
The subject fencing work was revised with the submission of a new development application following the withdrawal of a previous modification application No.MOD2015/0121 for the same length of fencing. This assessment has assessed the height of the fence in accordance to the DCP and for a sloping site the transitions and fence height is satisfactory and does not warrant refusal of the application.
- *Concern with the fence material be changed to Merbau facing on both sides of the fence to match the top capping and the southern face.*
Comment:
The fence includes a mix of materials including stone, masonry and Merbau. The fence rails are located on the north side and additional facing would cover these sections but add cost and further work to the structure. This issue relates to cost sharing between neighbours associated with the materials and aesthetics and is relevant to the *Dividing Fences Act 1991*, administered by the Local Court and Community Justice Centre. The proposal is satisfactory under the DCP, however further agreement regarding costs and additional aesthetic work to the fence is appropriate to be referred to the Community Justice Centre.
- *Concern that the fence cladding should not be constructed until the work with the adjacent property (Lot 3) is complete.*
Comment:
The fence is partly constructed already and the proposal has been designed to avoid relying on access arrangements across adjacent land. It is normal for dividing fences to be constructed on or close to the boundary however construction access arrangements are a matter between adjacent owners to address where there may be some sharing of access to facilitate construction. This is relevant to the *Dividing Fences Act 1991* administered by the Local Court and Community Justice Centre.
- *Concern that the fence structure partly encroaches on adjacent land as shown on the survey plan and therefore without the agreement of the owners of Lot 3 the fencing materials and cladding cannot be approved.*
Comment:
The applicant has provided a survey plan by Paul Keen & Company Surveyors, dated 2 September 2004, to show the fence is entirely within Lot 1 and the applicant has opted to ensure this in order to avoid costs and complications with the owners of Lot 3 DP927584. The owners of Lot 3 have provided a survey plan by Byrne & Associates, dated 16 November 2012, detailing part of the wall capping is 0.03m over the boundary (crossing into Lot 3) and part of a timber deck is 0.04m over the boundary (crossing into Lot 3) from Lot 1 DP 586163.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objection to approval and no conditions are recommended.
Natural Environment (Riparian Lands/Creeks)	The modification to DA2013/0677 is for a fence structure. The fence will have minimal impact on riparian land and Coal and Candle Creek. No objection to approval and no conditions are recommended.

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.
Aboriginal Heritage	The Aboriginal Heritage Office (AHO) provided a referral response on 4 January 2016 and raise no objection to approval of the modification works subject to the recommendation that <i>"should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council be contacted."</i>

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 modification 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.

Other Service Authorities

The application was not required to be referred to the Roads and Maritime Service (RMS) and no other Service Authority referral issues are raised pursuant to the SEPP.

Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)

Land uses in or near the river

Definition:

All uses in the river or a tributary of the river, or within 40 metres of the high water mark of the river or a tributary of the river where it is tidal or within 40 metres of the bank where it is non-tidal. This includes clearing and the construction and use of piers, wharves, boat sheds or other structures which have direct structural connection to the bank or bed of the river or a tributary of the river.

Comment:

Development consent is required to address environmental impacts of development within 40m of the high water mark and this development assessment report addresses this requirement for development consent to be sought for the proposed modification works.

General planning considerations

The general planning considerations relevant for this Part are:

(a) the aim of this plan, (The aim of this plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.)

Comment:

Warringah Council is the consent authority for the proposed modification for the fencing/structure and impacts of the proposed land use are considered by the development application process under Environmental Planning and Assessment Act 1979 and relevant environmental planning instruments, including those relevant at a regional context. Detailed local environmental impacts in the local context are assessed under the Warringah LEP 2011 and Warringah DCP 2011. The proposal is considered to be consistent with the aims of the SREP No.20 Hawkesbury-Nepean Catchment and the proposed work is consistent with adjacent land uses, subject to conditions.

(b) the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy

(maintaining and improving: Biodiversity for flora and fauna, Water quality of waterways and wetlands, Land management capabilities, Community resource management).

Comment:

The development of a dwelling on the land will not result in unreasonable loss of biodiversity for the local area as Cottage Point is surrounded national park lands and the site is adjacent to residential development. Water quality will be maintained by erosion controls and conditions of consent recommended. The modification work proposed is ancillary to residential housing and is consistent with adjacent land uses on private property.

(c) whether there are any feasible alternatives to the development or other proposal concerned.

Comment: The site has been evaluated for feasible use for a dwelling house and determined to be feasible for development. Residential use of the land is consistent with adjoining land uses. The site does not contain any significant habitat or features of value to the adjacent national park, and has not been developed for public access to the foreshore area or other community use. The land is not feasible for agricultural use. The most feasible use of the land (as private land) is for development of a detached dwelling.

(d) the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored.

Comment: The relationship of the modification work for the fencing screen structure to adjacent development is addressed by the relevant environmental considerations detailed in the assessment under Warringah DCP and Warringah LEP within this report. Where applicable conditions are recommended to minimise impacts of the proposal on the environment and ensure no unreasonable impacts on the riparian zone.

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
Minimum subdivision lot size:	5000 sqm	1098 sqm	No change	N/A	Yes
Height of Buildings:	8.5m	1.8m (Fence)	2.4m (Fence)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes

Clause	Compliance with Requirements
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	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	1.8m (Fence up to 1.8m)	up to 2.4m	Yes
B3 Side Boundary Envelope	45 degrees at 4m	Boundary fence	No change	Yes
	45 degrees at 4m (South - N/A)	Boundary fence	No change	Yes
B5 Side Boundary Setbacks	0.9m (North)	0.29m to 1.74m (Dwelling) Fence <0.5m	No change	No (As approved) Yes (DCP exception)
	0.9m (South - N/A)	Existing fence structure	No change	Yes (DCP exception)
B7 Front Boundary Setbacks	Merit consideration	Existing fence structure	No change	Yes (DCP exception)
B11 Foreshore Building Setback	15m	Existing fence structure	No change	Yes
D1 Landscaped Open Space and Bushland Setting	40% (439.2sqm)	28% Existing landscaping	No change	No (As approved)

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
Side Setback Exceptions - E4	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Front Boundary Exceptions - All Zones	Yes	Yes
B8 Merit assessment of front boundary setbacks	Yes	Yes
B11 Foreshore Building Setback	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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	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
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	No	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D15 Side and Rear Fences

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

Generally side fences are to be no higher than 1.8m and on sloping sites the height of fences may be averaged and fences and wall are to be regularly stepped as shown on the submitted plans dated 1/11/2015 drawn by Karla Wilford. Fencing materials selected vary along the fence but the majority is a Merbau timber that is treated with a fire retardant coating. Other sections of the fence are masonry and sandstone. In this regard, the fencing compliments the existing neighbourhood and the use of corrugated metal is not proposed. The works therefore are consistent with this objective.

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

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. Mod2015/0283 for Modification of Development Consent DA2013/0677 granted for alterations and additions to a dwelling house on land at Lot 1 DP 586163,4 Notting Lane, COTTAGE POINT, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation" to read as follows:

1A. Modification of Consent - Approved Plans and supporting Documentation

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
North Elevation DA05 Issue C	1/11/2015	Karla Walford Architect
North Elevation (Cottage) DA13 Issue C	1/11/2015	Karla Walford Architect

Reports / Documentation – All recommendation's and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Safety Provision CR-103-4	26/10/2015	Sydney Bushfire Consultants

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

B. Insert Condition "1B Compliance with other Department, Authority or Service requirements" to read as follows:

1B. Compliance with other Department, Authority or Service requirements

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

Other Department, Authority or Service	eServices Reference	Dated
Aboriginal Heritage Office	Response AHO Referral	4 January 2016

(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.

C. Insert Condition "1C Fencing work" to read as follows:

1C. Fencing Work

The fencing structure is to be contained within Lot 1 DP586163 subject to any boundary fencing/work agreement made under the *Dividing Fences Act 1991* affecting adjacent land.

(Note: Matters relevant to the the *Dividing Fences Act 1991* are administered through the Local Court system, including the Community Justice Centre.)

Reason: Compliance with the approved plans for construction.

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

Alex Keller, Senior Development Planner


The application is determined under the delegated authority of:

Rodney Piggott, Development Assessment Manager


















ATTACHMENT A

Notification Plan	Title	Date
 2015/378913	Plans Notification	21/12/2015

ATTACHMENT B

Notification Document	Title	Date
 2016/006168	notification map	08/01/2016

ATTACHMENT C

Reference Number	Document	Date
 MOD2015/0283	4 Notting Lane COTTAGE POINT NSW 2084 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	16/12/2015
 2015/373432	DA Acknowledgement Letter - Garry David Sexton	16/12/2015
 2015/378904	Modification Application Form	21/12/2015
 2015/378907	Applicant Details & Recommended Rejection Form	21/12/2015
 2015/378908	Plan Survey	21/12/2015
 2015/378913	Plans Notification	21/12/2015
 2015/378915	Report Statement of Environmental Effects	21/12/2015
 2015/378918	Report Bushfire Safety Provisions	21/12/2015
 2015/378920	Plans External Layout	21/12/2015
 2015/378921	Plans Master Set	21/12/2015
 2015/387563	File Cover	29/12/2015
 2015/387566	Referral to AUSGRID - SEPP - Infrastructure 2007	29/12/2015
 2015/387568	Aboriginal Heritage referral	29/12/2015
 2016/004431	Natural Environment Referral Response - Riparian	07/01/2016
 2016/006168	notification map	08/01/2016
 2016/026040	Submission - Holmes	27/01/2016
 2016/027039	Submission - Holmes	27/01/2016