

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2012/0252
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Responsible Officer	Renee Ezzy
Land to be developed (Address):	Lot 48 DP 216410 , 60 Epping Drive FRENCHS FOREST NSW 2086
Proposed Development:	Modification of Development Consent DA2006/0790 granted for Alterations and additions including a deck and an extension at the rear and to the garage
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Michael Vilnis Gitte Vils Hansen
Applicant:	Mrs Gitte Vilnis Michael Vilnis

Application lodged:	11/12/2012
Application Type	Local
State Reporting Category	Residential - Other
Notified:	17/12/2012 to 22/01/2013
Advertised	Not Advertised in accordance with A.7 of WDCP
Submissions	0

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

Environmental Planning and Assessment Act 1979 - Section 96(1A) -
Warringah Development Control Plan - B5 Side Boundary Setbacks

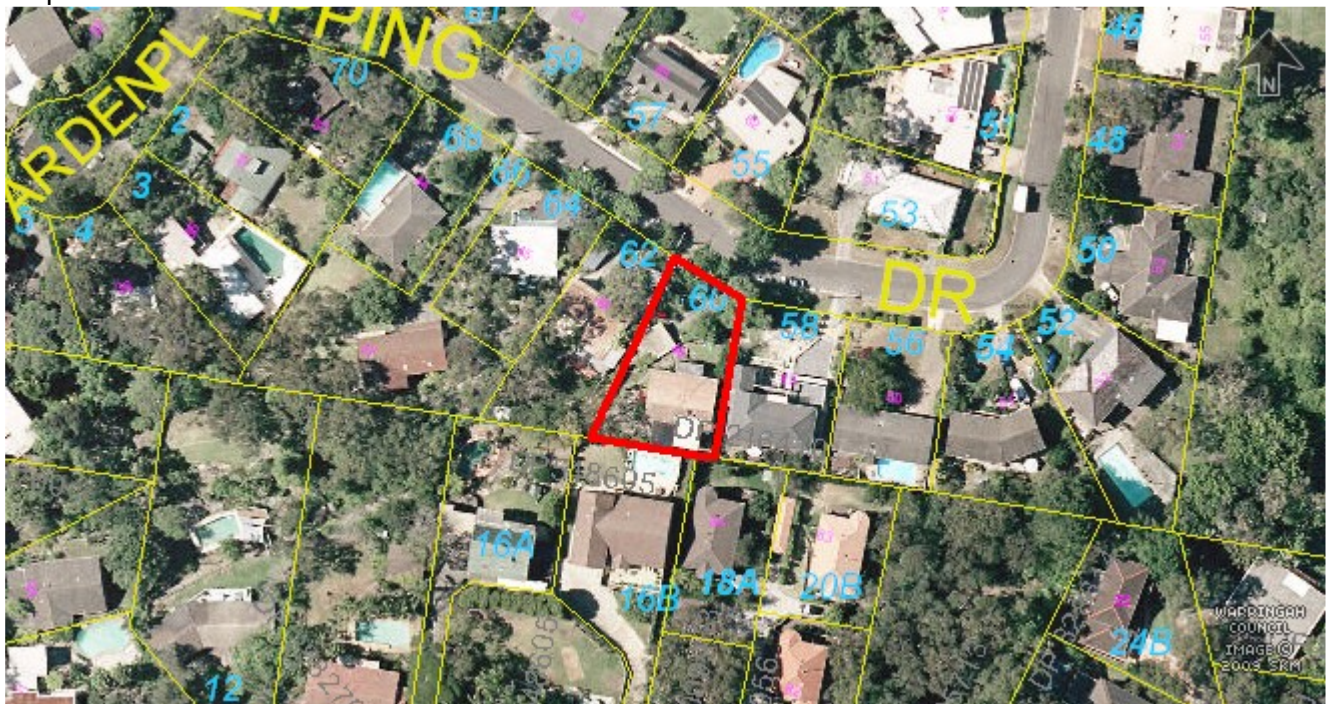
RECOMMENDATION

Approval

SITE DESCRIPTION

Property Description:	Lot 48 DP 216410 , 60 Epping Drive FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The subject site is located on the southern side of Epping Drive, Frenchs Forest. The site has an irregular shape with an angular frontage to Epping Drive. The total area of the subject site being approximately 715 sqm.</p> <p>The garage structure approved under DA2006/0790 has been partially constructed including the extension to the floor slab and part of the walls proposed as part of this modification.</p>

Map:



SITE HISTORY

On the 16 August 2006 Council received a development application for Proposed alterations and additions including a deck and an extension at the rear and to the garage. This application was approved on 10 April 2007. A site inspection revealed that these works are currently under construction.

On 11 December 2012, modification application MOD2012/0252 to extend the size of the garage to the south-west was lodged with Council. This modification is the subject of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks to extend the approved garage structure to the rear by 17m². The extended floor area includes a new window on the southern elevation for ventilation. This window adjoins a retaining wall within the subject site and has a sill height of approximately 1.75m.

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 DA2006/0790, 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)	Comments
Section 96(1A) (a) – Is the Modification to Consent of Minimal Environmental Impact?	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact.</p>
Section 96(1A) (b) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	<p>Yes</p> <p>The works as originally proposed included the garage structure with additional floor area for storage on the western side.</p> <p>The proposed modification includes a further storage area located at the rear, south of the original garage structure. The extra area is approximately 17m² which represents an additional 39% of area. These additions will have no impact on the Epping Drive streetscape and will not be visible.</p> <p>In this regard, reference is made to the ability of Council to issue retrospective planning consent for a modification under the provisions of Section 96 of the New South Wales Environmental Planning and Assessment Act 1979. In accordance with the decision of Talbot J in <i>Windy Dropdown Pty Ltd v Warringah Council (2000) NSWLEC 240</i>, a s96 application which relates to development that has already been carried out can be considered</p>

	<p>on its merits. Accordingly, the subject application is lawfully considered on its merits.</p> <p>The proposed modifications examined above can be approved under Section 96 of the New South Wales Environmental Planning and Assessment Act 1979 as they were subject of the original application, DA2006/0790 and it is considered that there are no additional environmental impacts arising from the proposed works likely to result in an adverse effect environmentally, or on the amenity of any adjoining premises. In addition, the proposed modifications do not detract from the buildings design, the exterior of the building remains substantially intact and the proposed modifications use materials similar to those originally proposed</p> <p>The modification is therefore considered to result in a development which is substantially the same as that approved in the original Notice of Determination.</p>
Section 96(1A) (c) & (d) – Public Exhibition of subject application / submission	The application was notified under the provisions Clause 90(1) of the EP&A Regulations 2000.
Section 96 (3) - Consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application	See discussion on “Matters for Consideration under Section 79C” 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 (1) (a)(iia) – 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)	<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 of consent.

Section 79C 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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 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 of 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 matter has been addressed via a condition of 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 matter has been addressed via a condition of 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 of 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 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 Warringah 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 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	No engineering objection raised to the proposed modification to development consent.
Landscape Officer	No objections to the proposed modification.

External Referral Body	Comments
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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 continued 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 subject site is not located within or adjacent to an electricity easement or substation. The works are not within 5m of an overhead powerline and the scope of works does not include installation of a swimming pool. Accordingly, the proposal is acceptable in terms of Clause 45 of SEPP Infrastructure.

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:	N/A	N/A	N/A	N/A	N/A
Height of Buildings:	8.5m	3.2m	3.2m	N/A	Yes
Rural Subdivision:	N/A	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.11 Bush fire hazard reduction	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
Wall height	7.2m	2.7m	2.7m	Yes
Minimum Floor to Ceiling Height	N/A	N/A	N/A	N/A
Number of storeys	N/A	N/A	N/A	N/A
Side Boundary Envelope	4m	<4m	<4m	Yes
Site Coverage	N/A	N/A	N/A	N/A
Side Boundary Setbacks	0.9m	0.2m	0.2m	No
Front Boundary Setbacks	6.5m	9m	9m	Yes
Rear Boundary Setbacks	6m	1m	No change	Yes. (Assessed under DA2006/0790)
Foreshore Building Setback	N/A	N/A	N/A	N/A
National Parks Setback	N/A	N/A	N/A	N/A
Coastal Cliffs Setback	N/A	N/A	N/A	N/A
Main Roads Setback	N/A	N/A	N/A	N/A
Landscaped Open Space and Bushland Setting	40%	>40%	41.9% (294.1m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	No	Yes
Side Setback Exceptions - R2	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
R2 - All other land in R2 Zone	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
All other land under R2	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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
D5 Orientation and Energy Efficiency	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
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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The proposed extension to the approved garage seeks to reduce the originally proposed setback from the western boundary from 750mm to 200mm and continue this setback for the new works at the rear of the garage.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The site contains sufficient areas of deep landscaping located away from where the garage is being constructed.

- *To ensure that development does not become visually dominant.*

Comment:

The proposed modifications are located behind the approved garage structure and will not be visually dominant.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The modifications to the structure do not change the single storey garage as approved. In addition, the structure is set into the site which further reduces the perceived bulk and scale.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The relocation of the western wall of the garage 550mm closer to the boundary does not unreasonably impact the privacy, amenity or solar access of the adjoining property. The height of the garage structure and the proposed modifications will sit less than 1m above the height of the existing boundary fence.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

There are no views available across this section of the site.

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

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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.

The proposal has been assessed against the relevant matters for consideration under Section 79C of the EP&A Act 1979. 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 specified in S.5(a)(i) and (ii) 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. Mod2012/0252 for Modification of Development Consent DA2006/0790 granted for Alterations and additions including a deck and an extension at the rear and to the garage on land at Lot 48 DP 216410,60 Epping Drive, FRENCHS FOREST, subject to the conditions printed below:

A. Add Condition No.1B - 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
VIL.1 Revised - Extension to Existing Garage	Nov 2012	John Haines

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

c) The development is to be undertaken generally in accordance with the following:

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

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


Renee Ezzy, Development Assessment Officer

The application is determined under the delegated authority of:


Rodney Piggott, Development Assessment Manager















ATTACHMENT A

Notification Plan	Title	Date
 2012/422596	plan notification	11/12/2012

ATTACHMENT B

Notification Document	Title	Date
 2012/426980	Notification map	17/12/2012

ATTACHMENT C

	Reference Number	Document	Date
	2012/422302	DA Acknowledgement Letter - Gitte Vilnis - Gitte Vils Hansen - Michael Vilnis	11/12/2012
	2012/422600	plan mod large	11/12/2012
	2012/422591	modification application form	11/12/2012
	2012/422593	applicant details	11/12/2012
	2012/422596	plan notification	11/12/2012
	2012/426619	File Cover	17/12/2012
	2012/426620	Referral to AUSGRID - SEPP - Infrastructure 2007	17/12/2012
	2012/426621	Referral to Development Engineers	17/12/2012
	2012/426972	Notification Letters - 13	17/12/2012
	2012/426980	Notification map	17/12/2012
	2013/001488	Engineering Referral Response	03/01/2013
	2013/008365	Landscape Referral Response	10/01/2013