

10th December 2015
The General Manager
Warringah Council
729 Pittwater Road
Dee Why 2099

Re Application to Modify Consent - Section 96

Dear Sir,

Please find enclosed a revised Section 96 request to modify the design of a "fence" located inside the northern boundary of our property

As you would be aware, our original Application (dated 10th June 2015) was withdrawn at Council's suggestion as Council felt the Application could not be supported due to concerns regarding height, materials and the fence's location

Please find below the responses that address these issues

Fence Height

Council noted that the fence's height on the lower and western levels was deemed excessive and (later) provided a diagram setting this out. This is included as **Appendix A**

As you will see on the revised projection included as **Appendix B**, the height of the two lower tiered levels of the fence is now fully compliant at 1.8 metres. Above this, the heights of the stepped sections have been significantly reduced to approximate the original approved heights (as instructed in the notes shown on Appendix B)

It should be noted that the owners of Lot 3, in the process of constructing their premises have altered the natural height of the land and will effectively reduce the apparent height of the fence as constructed. Specifically they have raised the entrance driveway by approximately one metre which reduces the apparent height of the fence to around 60 cm on the upper tier. They have also constructed a retaining wall abutting the fence at right angles at the "D Gridline" shown on the WDAP approved plans. We have been told by the builders that this has been put in place to facilitate the construction of an elevated walkway servicing their entrance door to the rear and southern side of their dwelling (we note that such a walkway seems at odds with the plans approved by WDAP which show no such supporting wall and indeed shows the ground sloping down and following the natural fall of the land immediately to the east of the doorway)

This will again effectively reduce the apparent height in the affected section (to less than a metre at the western end) despite it being 1.8 metres on our side

Please see **Appendix C** for copies of the original WDAP Stamped plans along with the Engineering drawings showing a new supporting wall abutting the fence that will be used to support the suspended walkway

Fence Location

Council noted that no Survey documentation was included that supported our assertion that the fence would be situated within our boundary

A Survey of our property is included as **Appendix D** and shows that the entire "Top Cottage", including its northern guttering, is within our property's boundary (Note While the decking is not shown it is positioned at a point that is at least an equal distance inside the boundary)

The fence was constructed (as can be seen in **Appendix E**) approximately 10cm inside the plumbline of the Cottage's northern guttering, and we trust that this will allay Council's concerns in this area

Building Materials

There were two concerns raised by Council These being

- i) That the construction material " complement the existing neighbourhood" as per Clause D15 *Side and Rear Fences* of the WDCP 2011 particularly the use of "Modak", (which was chosen to facilitate the necessary fire rating required)
- ii) That the fence's solid design "contributes to further loss of 3 Notting Lane water views"

Firstly the construction material

The original approved design (DA 2013/0677) was comprised of open metal framing, masonry and stone sections On inspection of the design of the residence on Lot 3, we felt that our privacy would be significantly compromised, and to this end, replaced the "open framed metal sections" with "solid" Merbau planking supported by pine framing After the fence was erected, we were advised that this framing would not provide an acceptable fire rating and so after consultation with a bushfire expert (Sydney Bushfire Consultants), Modak (Mgo) Board was proposed (and indeed satisfied the RFS when it was submitted by Council for approval) The Sydney Bushfire Consultants, original report is enclosed as **Appendix F**

Merbau timber was chosen because of its visual appeal and screening properties That it was the chosen material for the construction of No 5 Notting Lane's house supports the view that its choice complements the neighbourhood

While we felt Modak Board would be acceptable (in that it could be treated in several ways to soften its appearance eg painting, cement rendering etc) Council has flagged its concern To this end we have sought out alternative solutions that would satisfy both the RFS requirements and Clause D15 of WDCP 2011

As per the attached revised Bushfire Safety Report provided by Sydney Bushfire Consultants enclosed as **Appendix G** , it is now proposed to treat the northern face of the fence in such a way that should satisfy any concerns Council may have as to its compliance with Section D15 of the WDCP 2011 while still providing a suitable fire rating

Specifically we now propose the following

- a) The majority of the fence (greater than 20metres) will not require any cladding and can retain a natural timber appearance ie It will now be treated with a fully compliant and suitably tested fire resistant paint product (as per AS39592009 Appendix F Section F1 c) covered where necessary with a coloured top coat consistent with Merbau
- b) The northern face of the section of the fence that is within 20 metres of the western "fire source" will be clad with metal (in addition to the fire resistant paint) The metal siding is consistent with the other fences in Notting Lane and will be painted grey to mirror the metal fence that borders Lot 3 on its northern boundary We have enclosed photos of the other fences in Notting Lane (which are predominantly metal, but also include metal/timber combinations and stone, in **Appendix H** as proof that this new siding's appearance is consistent with and complements the neighbourhood
- c) The lower section of the fence is constructed of sandstone and mirrors the sandstone wall fence on our southern boundary that extends to (and across) the mean high water mark

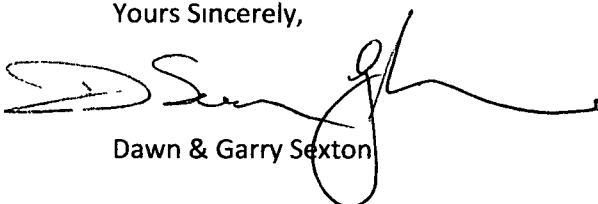
Secondly, the " loss of 3 Notting Lane water views"

This is addressed with the reduced height of the new design as per **Appendix A**

From the above we trust that Council will appreciate that we have taken their feedback very seriously and have attempted to fully address the issues previously raised

Please do not hesitate to contact us should you have any further concerns otherwise we look forward to receiving your approval and completing this matter

Yours Sincerely,



Dawn & Garry Sexton

4 Notting Lane Cottage Point 2084

PS Please note, that as David Auster (who assessed our original Application) has now moved to a new position within Council, we have enclosed a copy of the covering letter for our original application as back ground for the new Assessing Officer It is included in **Appendix I**

10th June 2015

Mr David Auster

Warringah Council

Re Application to Modify Consent - Section 96

Dear David,

Please find enclosed a Section 96 request to modify the design of a "fence" located inside the northern boundary of our property. Construction has already commenced as we were unaware that changes made to the construction material required a submission to Council.

Our intention is to replace the open "Pool Fence" sections with a solid Merbau faced screen.

As Council would be aware, approval has now been given for the erection of a dwelling on the adjoining property that overlooks and overshadows our land. The reason for this change in materials is to provide visual privacy, particularly in the area between our upper cottage and lower main house, (as this is the play area of our grand children) and to the area directly outside the lounge room window of our main house.

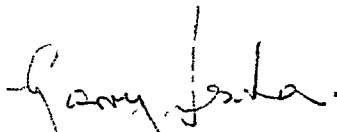
We do accept that the timber construction is not without its issues, however we would ask council to approve our request for variation on considering the following:

- i) The Fence is built entirely within our property line and is not a "Boundary Fence" per se. This was intentional as we did not wish to involve the neighbours to our north with the design or seek their contribution to its cost.
- ii) Timber was selected, as our original enquiries for a slatted metal fence found that the steep slope of the land made it impossible to accurately manufacture the slats to the correct length.
- iii) As Merbau was approved for our decking (and indeed used to construct the entire dwelling to our South), we assumed that there would be no issue with its use as a screen.
- iv) On the advice of our Bushfire Consultant, the screen will be backed by Magnesium Oxide board so as to achieve a satisfactory fire rating.
- v) As our land borders an existing "wildlife corridor" we understand that Council prefers a construction that facilitates the movement of these animals. We feel the Merbau/MgO board satisfies this guideline.
- vi) Aesthetically we feel the Merbau is more in keeping with the other constructions on our property and gives a "softer" look to the structure.
- vii) The steep slope of the land and horizontal slatting design necessitates the height exceeding the 1.8 m guideline at certain points along its length. Given that council has approved a dwelling to our north that clearly exceeds the height/silhouette requirements of the DCP, we hope that the same consideration will be shown to us in order to give us the privacy we are entitled to enjoy.

We have included a report from Sydney Bushfire Consultants that supports our request for a timber/MgO Screen along with a brochure on the fire protection qualities of the chosen MgO product "Modak Board"

In closing, we do apologise for proceeding with the construction without submitting a Section 96 request. This was an omission caused by a lack of knowledge of the regulations and we trust Council will understand that we are very keen to see a favourable resolution to the matter.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Garry Sexton".

Garry & Dawn Sexton
4 Notting Lane
Cottage Point 2084