

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2019/0118
<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot 65 DP 12578, 60 Riverview Parade NORTH MANLY NSW 2100
<b>Proposed Development:</b>	Modification of Development Consent DA2018/1432 granted for alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	James Vincent Sydney Smith Jenny Kirsten Smith
<b>Applicant:</b>	Jenny Kirsten Smith
<b>Application lodged:</b>	22/03/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	02/04/2019 to 16/04/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	13
<b>Recommendation:</b>	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 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 Local Environmental Plan 2011 - 5.5 Development within the coastal zone

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 65 DP 12578 , 60 Riverview Parade NORTH MANLY NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site is legally known as Lot 65, within Deposited Plan 12578, and commonly referred to as 60 Riverview Parade North Manly. The site is located within the R2 Low Density Residential zone.</p> <p>The site is regular in shape with an average site depth of 36.6m and a site width of 14.63m equating to an overall site area of 539.9sqm.</p> <p>The site is generally level with no topographical features, and the rear of the site adjoins Manly Lagoon.</p> <p>The site is currently occupied by a two storey single dwelling with an attached garage and landscaping. Pedestrian and vehicle access is from Riverview Parade at the site frontage.</p> <p>Surrounding sites consist of one and two storey dwelling houses, of varying ages, within landscaped settings.</p>

Map:



## SITE HISTORY

A search of Council's records has revealed the following relevant development applications for the property:

- Development application DA2018/1432 for alterations and additions to a dwelling house was determined by Council on the 14/12/2018.
- Development application DA2015/1166 for alterations and additions to a dwelling house was determined by Council on the 09/02/2016.
- Complying development application CDC2016/0862 for the alterations to a window/sliding doors in bedroom no. 2 and the master bedroom, as well as configurations of the roof extension to the BBQ area was received by Council on the 17/11/2016.

## PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks to modify Condition 1 to reflect the submitted amended plans, and accordingly delete Condition number 2 of consent DA2018/1432.

The amended plans submitted as part of the modification demonstrate the setback distances as required by Condition number 2 in previous application DA2018/1432. Therefore, Condition number 2 is no longer required as the amended plans are consistent with Condition number 2.

Condition number 2 to be deleted is as follows:

*Amendments to the approved plans*

*The following amendments are to be made to the approved plans:*

- *The wall and roof of the proposed study is to maintain a minimum setback of 1.346m to the north boundary.*

- The balustrade to the proposed balcony is to maintain a minimum setback of 0.946m to the northern boundary.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land. (DACPLB02)

## 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 DA2018/1432, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	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 DA2018/1432.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2018/1432 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
(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 Environmental 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 "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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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&amp;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 in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;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 in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;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>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## 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 the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Mr Bartholomew Jeremy Caffin	58 Riverview Parade NORTH MANLY NSW 2100
David Rodney Thomas	12 / 74 - 78 Crown Road QUEENSCLIFF NSW 2096
Lee McIntosh	14 Kokoda Crescent BEACON HILL NSW 2100
Kathryn Mcdougall	
Dimitri Kappas	
Lorraine Mcdougall	
Elizabeth Moore	58 Riverview Parade NORTH MANLY NSW 2100
Mrs Rosalind Jane Wade	4 Stewart Avenue CURL CURL NSW 2096
Mr Michael Charles Vincent	54 Riverview Parade NORTH MANLY NSW 2100
Mr Brendan Francis Donohoe	19 Riverview Parade NORTH MANLY NSW 2100
Mr John Angus James Richmond	44 Riverview Parade NORTH MANLY NSW 2100
Susannah Dorothea Lang	44 Riverview Parade NORTH MANLY NSW 2100
Judy Moore	

NB : The blank addresses are due to Respondents supplying emails only.

There were thirteen (13) submissions received in response to the notification. However, submissions received from the same street address are counted as one submission. Therefore, there were eleven (11) formal submissions received, each being from a unique address. Of these eleven (11) submissions, eight (8) submissions raised concerns with matters pertaining to the modification and three (3) submissions are in support of the modification.

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

- Building Bulk
- Privacy

The matters raised within the submissions are addressed as follows:

- ***There is concern that the modification is unreasonable in its bulk and scale due to the northern side boundary envelope encroachment and this will create amenity impacts to Number 58 Riverview Parade.***

Comment:

The proposed modification was accompanied by amended architectural plans to reflect the side setback distances conditioned as a part of previously approved application DA2018/1432.

The assessment of the side boundary envelope variation and building bulk was addressed in the previous assessment report for DA2018/1432 under *Clause B3 Side Boundary Envelope* and

*D9 Building Bulk.*

As there is no change to the conditioned side setbacks, no additional assessment as part of the current application is required.

Therefore, this issue has been addressed and does not warrant refusal of the application.

- ***Concern has been raised that the front balcony creates privacy impacts through the direct overlooking into the No. 58 Riverview Parade.***

Comment:

There is no change to the approved development as part of this modification.

Privacy impacts associated with the first floor balcony were addressed as part of the previously approved development application DA2018/1432 and are detailed within the assessment report under *Clause D.8 Privacy*.

A site visit was undertaken with a representative of Number 58 Riverview Parade on the 17 April 2019 to ensure that any amenity and privacy impacts had not changed since the previous site visit and assessment for DA2018/1432 and it was confirmed that there was no change.

Therefore, this issue has been addressed and does not warrant refusal of the application.

## REFERRALS

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.

## 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 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.

## 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	Complies
Height of Buildings:	8.5m	7.8m	No change	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

### 5.5 Development within the coastal zone

The subject site is identified as being located within the Coastal Use Area under the provisions of SEPP (Coastal Management) 2018. Upon review of the application, Council can be satisfied of the matters prescribed by clauses 13, 14 and 15 of this policy.

### Warringah Development Control Plan

#### Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	6.1m	No change	Yes
B3 Side Boundary Envelope	4m North	Encroachment of 0.1m - 0.4m for a length of 6.8m*	No Change	Yes
	4m South	Encroachment of up to 0.9m for length of 12.5m	No change	Yes
B5 Side Boundary Setbacks	0.9m North	0.946m - 1.35m*	No change	Yes
B7 Front Boundary Setbacks	6.5m	8.5m First Floor	No change	Yes
B9 Rear Boundary Setbacks	6m	18.9m First Floor	No change	Yes
D1 Landscaped Open Space and Bushland Setting	40%	37% (198sqm Existing)	No change	Yes

\* No change to previously conditioned setbacks

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
D9 Building Bulk	Yes	Yes

### 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**

### **Northern Beaches Council Contributions Plan 2018**

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 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 to Modification Application No. Mod2019/0118 for Modification of Development Consent DA2018/1432 granted for alterations and additions to a dwelling house on land at Lot 65 DP 12578,60 Riverview Parade, NORTH MANLY, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Plan First Floor DA102 Rev D	April 2019	Mather Architecture
Plan Roof DA103 Rev B	December 2018	Mather Architecture
Elevation East and North DA201 Rev C	January 2019	Mather Architecture
Elevation West and South DA202 Rev B	December 2018	Mather Architecture
Sections DA301 Rev B	December 2018	Mather Architecture

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

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

**B. Delete Condition 2. Amendments to the approved Plans to read as follows:**

Deleted

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

**Signed**



**Catriona Shirley, Planner**

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



**Steven Findlay, Manager Development Assessments**