

REVIEW OF DETERMINATION ASSESSMENT REPORT

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| Application Number: | REV2014/0051 |
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| Responsible Officer: | Charise Chumroonridhi |
| Land to be developed (Address): | Lot C DP 368890 , 14 Emerald Street NARRABEEN NSW 2101 |
| Proposed Development: | Review of the determination of Modification Application MOD2014/0175 for alterations and additions to an existing dwelling house and construction of a secondary dwelling |
| 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: | Paul James Gray Francine Nicola Gray |
| Applicant: | Matt Elkan Architect |

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| Application lodged: | 22/10/2014 |
| Application Type: | Local |
| State Reporting Category: | Refer to Development Application |
| Notified: | Not Notified |
| Advertised: | Not Advertised in accordance with A.7 of WDCP |
| Submissions: | 0 |
| Recommendation: | Approval |

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| Estimated Cost of Works: | \$ 371,000 |
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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

There are no assessment issues.

SITE DESCRIPTION

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| Property Description: | Lot C DP 368890 , 14 Emerald Street NARRABEEN NSW 2101 |
| Detailed Site Description: | <p>The site is legally known as Lot C, DP368890, and commonly referred to as 14 Emerald Street Narrabeen. The site is a battle -axe allotment with a pedestrian vehicle access of 12.19m in length running from Emerald Street to the allotment proper. The remaining area of the site is regular in shape with an average depth of 50m and a site width 12.6m equating to an overall site area of 648m², 592m² excluding the access handle.</p> <p>The site is flat and adjoins Narrabeen Lake on the western boundary. The site is constrained by low and medium level flooding. There are no other significant topographical features.</p> <p>The site is currently occupied by a single detached dwelling with a separate garage and landscaping. Vehicle and pedestrian access via the access handle from Emerald Street on the northern boundary at the eastern end of the site.</p> |

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant applications for this site:

MOD2014/0175

Refused on 23 September 2014 for modification of development consent DA2013/0544.

DA2013/0544

Approved on 16/07/2013 for alterations and additions to a dwelling house and construction of a secondary dwelling.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to review the refusal of MOD2014/ 0175 to delete or amend condition 8(b) Flood which reads as follows:

"In order to protect occupants from flood inundation the following is required:

The height of the ceiling must be set at a minimum of 5.6m AHD to allow for future raising of the ground floor to the flood planning level of 3.2m AHD."

It is proposed that compliance with condition 8(b) of original consent is impossible under the terms of the approval.

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:
In accordance with Section 96AB (1) of the Act, an applicant for the modification of a development consent for which a council is the consent authority may request the council to review a determination by the council under section 96 or 96AA of the application. Council is the consent authority for the modification application MOD2014/0175, and can therefore conduct the review.

In accordance with Section 96AB (3) of the Act, the review must be carried out by:

- (a) if the determination was made by the council—the council, or
- (b) if the determination was made by a delegate of the council—by the council or another delegate of the council who is not subordinate to the delegate who made the determination.

Comment: The determination was made by a delegate of Council and the review has been carried out by a delegate of Council who is not subordinate to the delegate who made the determination.

In accordance with Section 96AB (5) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the modification application. The application was determined on 23 September 2014. The review was lodged on 22 October 2014 which provides adequate time for the review to be conducted and determined within 6 months of the date of determination.

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 | <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 |

| Section 79C 'Matters for Consideration' | Comments |
|---|--|
| Regulation 2000 (EP&A Regulation 2000) | <p>consent.</p> <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 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 this application.</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 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 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 | (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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. |
| Section 79C (1) (c) – the | The site is considered suitable for the proposed development. |

| Section 79C 'Matters for Consideration' | Comments |
|---|---|
| suitability of the site for the development | |
| 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 was not notified.

MEDIATION

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

REFERRALS

| Internal Referral Body | Comments |
|--|---|
| Building Assessment - Fire and Disability upgrades | No objections to proposal. |
| Natural Environment (Coastal) | The property is not impacted by coastal erosion or coastal inundation. As a result there are no objections to this application. |
| Natural Environment (Flood) | As noted in the structural report by NB Consulting Engineers: "It is impossible to add 700mm of height to the walls without a complete stripping and rebuild of the internal framed structure for vertical continuity of structural bracing. If this was to be done the final dwelling would be completely new. This is outside the terms of the DA approval." The modification is approved. |
| Natural Environment (Riparian Lands/Creeks) | The riparian assessment has been completed. The Modification is for changes to a condition relating to flooding and does not have any effect on riparian land and conditions. Therefore, no objection to approval and no conditions are recommended. |
| Parks, reserves, beaches, foreshore | No objections to this application. |

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.

Warringah Local Environment Plan 2011

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| 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 |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|-------------------------------------|
| 5.5 Development within the coastal zone | Yes |
| 6.1 Acid sulfate soils | Yes |
| 6.2 Earthworks | Yes |
| 6.3 Flood planning | Yes |

Warringah Development Control Plan

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|----------------------|------------------------------|-----------------------------|
| E11 Flood Prone Land | 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

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

| Warringah Section 94 Development Contributions Plan | | |
|--|-----------|----------|
| Contribution based on a total development cost of \$ 371,000 | | |
| Contributions | Levy Rate | Payable |
| Total Section 94A Levy | 0.95% | \$ 3,525 |
| Section 94A Planning and Administration | 0.05% | \$ 186 |
| Total | 1% | \$ 3,710 |

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 Development Consent to REV2014/0051 for Review of the determination of Modification Application MOD2014/0175 for alterations and additions to an existing dwelling house and construction of a secondary dwelling on land at Lot C DP 368890, 14 Emerald Street, NARRABEEN, subject to the conditions printed below:

A. Modify Condition No. 8(b) Flood to read as follows:

In order to protect occupants from flood inundation the following is required:

a) Flood Protection

All new building works and services shall be designed to withstand the hydraulic forces of the floodwaters up to the flood planning level of 3.2m AHD. Buoyancy (particularly in relation to cars in the ground floor car park), flowing water with debris, wave action, the flood compatibility of materials and waterproofing shall be addressed. Structural details for the construction for all elements including the building, air-conditioning units and waste and recycling bins are to be prepared by a suitably qualified Engineer.

e) Hazardous Chemicals

Hazardous Chemicals are not to be stored in areas under the flood planning level of 3.2m AHD.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect the building from flooding in accordance with Council and NSW Government policy. (DACNEC09)

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

Charise Chumroonridhi, Planner

The application is determined under the delegated authority of:

Phil Lane, Development Assessment Manager



















ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

| Reference Number | Document | Date |
|---|--|-------------|
|  REV2014/0051 | 14 Emerald Street NARRABEEN NSW 2101 - Reviews - Section 96AB Review of Modification | 22/10/2014 |
|  2014/325360 | invoice for ram applications - Matthew Elkan | 22/10/2014 |
|  2014/325362 | DA Acknowledgement Letter - Matthew Elkan | 22/10/2014 |
|  2014/327678 | S96AB Review of Modification Determination | 23/10/2014 |
|  2014/327685 | Applicant Details | 23/10/2014 |
|  2014/327689 | Report - Statement of Environmental Effects | 23/10/2014 |
|  2014/327694 | Report - Structural Comments | 23/10/2014 |
|  2014/327697 | Plans - Internal demolition | 23/10/2014 |
|  2014/327707 | Plans - Internal | 23/10/2014 |
|  2014/327718 | Plans - Master Set | 23/10/2014 |
|  2014/329413 | Building Assessment Referral - REV2014/0051 - 14 Emerald Street NARRABEEN - SS | 27/10/2014 |
|  2014/329518 | File Cover | 27/10/2014 |
|  2014/330624 | Natural Environment Referral Response - Flood | 27/10/2014 |
|  2014/331377 | Natural Environment Referral Response - Coastal | 28/10/2014 |
|  2014/332540 | Parks, Reserves and Foreshores Referral Response | 29/10/2014 |
|  2014/335044 | Natural Environment Referral Response - Riparian | 30/10/2014 |
|  2014/336958 | Building Assessment Referral Response | 03/11/2014 |
|  2014/336959 | Building Assessment Referral Response | 03/11/2014 |