

RESIDENTIAL DEVELOPMENT – S96(1A) APPLICATION ASSESSMENT REPORT

Modification Application Number:	Mod2014/0147
Development Application Number:	DA2013/0892
Planner:	David Auster
Property Address:	Lot 170 DP 752038 No related Land, Lot 170/ Morgan Road BELROSE NSW 2085,
Proposal Description:	Modification of Development Consent DA2013/0892 granted for Demolition works, Construction of a new dwelling house, secondary dwelling, riding stables and arena, tennis court and swimming pool
Recommendation:	APPROVED
Clause 20 Variation:	No
Proposal in Detail:	The modifications include the relocation of the tennis court, revised stable, relocation of coach's box and minor changes to the riding arena. There are no changes to the location or height of the dwelling as approved. The coach's box is repositioned as per original DA approval.

History and Background:	DA2013/0892 was approved by Council on 19/11/13. There have been three subsequent modification applications approved: MOD2013/0236 – S96(1) to correct a Council error in relation to the arborist report. MOD2013/0263 – S96(1A) for Internal changes to dwelling, front fence, removal of coach's box, reconfiguration of stables, relocation of tennis court. MOD2014/0098 – S96(1A) for relocation of the tennis court.
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Plans Reference

Drawing Number	Title	Revision	Dated	Drawn By
I 012	Site Plan	5	01/07/14	MJ Shephard & Co
I 013	Setout Stable Tennis Court Coaches Box	5	01/07/14	MJ Shephard & Co





I 014	Coaches Box Plans Elevation Perspective	5	01/07/14	MJ Shephard & Co
I 015	Stable plan Elevation	5	01/07/14	MJ Shephard & Co
I 016	Arena Plan	5	01/07/14	MJ Shephard & Co
I 017	Arena Elevations	5	01/07/14	MJ Shephard & Co

Report Section	Applicable – Yes or No
Section 1 – Code Assessment	Yes
Section 2 – Issues Assessment	No
Section 3 – Site Inspection	Yes

Notification Required:	Yes	14DAYS
Submissions Received:	No	Number of Submissions: Nil
Cost of Works:	\$2,966,114.00	
Section 94A Applicable:	Yes (No change)	TOTAL: \$29,661

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of	\$	2,966,114.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	28,178
S94A Planning and Administration	0.05%	1,483
Total	1.0%	\$29,661



Section 96(1A) EPA ACT 1979	
Section 96(1A) (a) – Is the Modification to consent of Minimal Environmental impact?	Yes
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?	Yes
Section 96(1A) (c) & (d) – Has the application been on Public Exhibition?	Yes
Have you considered any submissions?	N/A
Section 96 (3) – Have you considered such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application	Yes

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS

Warringah Local Environmental Plan 2000

Locality: B2 Oxford Falls Valley

Development Definition: “Housing” and “other buildings, works, places or land uses that are not prohibited or in Category 1 or 3”.

Category of Development: Category 2

Desired Future Character Statement:

“The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.



Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained."

Is the development consistent with the Locality's Desired Future Character Statement?

Yes

Category 2 Assessment against the Desired Future Character Statement

Requirement: *"The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.*

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

Comment: The dwelling will remain unchanged from the previous approval. The proposed relocation and changes to the tennis court and stables will not significantly alter the skyline. The proposed modifications do not substantially alter the previously approved development, in that the main components of the development remain, in modified locations and with modified designs. The relatively minor changes do not alter the previous assessment with regard to this requirement, and the development will remain low intensity and low impact.

Requirement: *The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

Comment: The proposed relocation of tennis court and stables does not result in any new substantial impacts on the natural landscape including landforms and vegetation.

Requirement: *A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.*

Comment: The site is not located on Forest Way or Wakehurst Parkway. The proposed modified plans show further fencing in the front setback area. However, condition 14 on the existing consent requires that this fencing be no more than 1.4m in height.

Requirement: *Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained."*

Comment: The proposal will not create any siltation or pollution of Narrabeen Lagoon. The proposed modifications are relatively minor in the context of the overall site, and do not alter the previous assessment in this regard.

BUILT FORM CONTROLS



Built Form Compliance Table B2 Oxford Falls Valley Locality Statement					
Built Form Standard	Required	Approved	Proposed	Comment	Compliance
Building Height	Ridge: 8.5m Ceiling: 7.2m	Riding Arena: 7.8m total, 4.8m ceiling height. Stable: 4.4m total, 3.938 ceiling height. Dwelling: 6.3m total, 5.4m ceiling height.	Riding arena: 8.45m total, 5.89m ceiling height. Stable: 4.007m total, 2.782 ceiling. Dwelling no change.	Modification s comply.	Yes
Housing Density	1 dwelling per parcel of land	1 dwelling	1 dwelling	No change	Yes
	1 granny flat per allotment	1 granny flat	1 granny flat	No change	Yes
Front Setback	20m	46.6m	No change	Complies.	Yes
Rear and Side Setback	10m	Minimum setbacks as follows: Riding arena 10m east side. Dwelling 10.4m west side. Dwelling 20m north (rear). Pool 15.5m north (rear).	No changes.	Complies.	Yes
Landscape Open Space	30% of site area	77% (15350sqm)	76% (15119sq m)	Complies.	Yes

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL



General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	The application does not propose changes to the existing approved colour scheme.	Yes
CL39 Local retail centres	No		N/A
CL40 Housing for Older People and People with Disabilities	No		N/A
CL41 Brothels	No		N/A
CL42 Construction Sites	Yes	Ample area is available for storage of materials on site.	Yes
CL43 Noise	Yes	The development is not likely to cause any unreasonable or unusual noise in the rural area.	Yes
CL44 Pollutants	Yes	The development is unlikely to cause any pollution in the area.	Yes
CL45 Hazardous Uses	No		N/A
CL46 Radiation Emission Levels	No		N/A
CL47 Flood Affected Land	No		N/A
CL48 Potentially Contaminated Land	Yes	Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. As discussed under the History section of the original assessment report there appears to have been some filling of the site in the past. However, based on available information there is no reason to suspect that this fill is contaminated. Therefore the site is considered suitable for the proposed use. A condition was included in the notice of determination requiring that if any evidence of contamination is uncovered it shall be immediately notified to Council and the Principle Certifying Authority, and appropriate action initiated.	Yes



General Principles	Applies	Comments	Complies
CL49 Remediation of Contaminated Land	No		N/A
CL49a Acid Sulphate Soils	No		N/A
CL50 Safety & Security	Yes	The proposed modifications will not detract from safety and security in the area.	Yes
CL51 Front Fences and Walls	Yes	The site plan shows the front fence being extended across the front setback area, although no elevation details have been provided. The consent contains existing condition 14 requiring the fence to be no more than 1.4m in height.	Yes
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No		N/A
CL53 Signs	No		N/A
CL54 Provision and Location of Utility Services	Yes	The development will utilise existing connections.	Yes
CL55 Site Consolidation in 'Medium Density Areas'	No		N/A
CL56 Retaining Unique Environmental Features on Site	Yes	There are a number of rock platforms across the site, some of which will be removed or built over in the region of the riding arena and stable. However, a significant number of rock platforms and outcrops will be retained by the modified development, which generally avoids the majority of the rocky areas on site.	Yes
CL57 Development on Sloping Land	Yes	The control states that development should minimise excavation and limit fill to 1m in depth. The proposed riding arena will require fill up to 1.2m in the lower south east corner, just over the 1m requirement. However this will enable the proposal to minimise excavation on the	Yes



General Principles	Applies	Comments	Complies
		northern side. The minor non-compliance is therefore considered acceptable.	
CL58 Protection of Existing Flora	Yes	The proposed modified works are generally in areas which do not contain existing significant vegetation, and will not result in the removal of large numbers of trees. Council's Natural Environment Unit has assessed the proposal and has not raised any concerns.	Yes
CL59 Koala Habitat Protection	No		N/A
CL60 Watercourses & Aquatic Habitats	Yes	Council's NEU assessed the proposal and provided the following comments: <i>The relevant documents relating to the modification to move the location of the tennis court, stables and arena have reviewed. A site inspection was undertaken in 2013 when the original DA was submitted to Council. The watercourse is shown on SEA is incorrect and is not located on the development site, but on the adjoining property Lot 163 DP 752038 Morgan Road. Therefore a riparian assessment is not required.</i>	Yes
CL61 Views	Yes	The modified development will not unreasonably impact on any views.	Yes
CL62 Access to sunlight	Yes	The modified development will not create any unreasonable overshadowing of neighbours.	Yes
CL63 Landscaped Open Space	Yes	Approximately 76% of the site will be landscaped.	Yes
CL63A Rear Building Setback	Yes	There are no works proposed within the 10m rear setback area which will remain landscaped.	Yes
CL64 Private open space	Yes	Ample private open space will be available on site.	Yes
CL65 Privacy	Yes	The modifications will not create any unreasonable privacy impacts.	Yes
CL66 Building bulk	Yes	The proposed modifications will not significantly alter the bulk and scale of the	Yes



General Principles	Applies	Comments	Complies
		development.	
CL67 Roofs	Yes	The proposed roofing will remain generally similar to what was previously approved.	Yes
CL68 Conservation of Energy and Water	Yes	The original BASIX certificate relating to the dwelling remains valid.	Yes
CL69 Accessibility – Public and Semi-Public Buildings	No		N/A
CL70 Site facilities	Yes	There is ample room on site for site facilities.	Yes
CL71 Parking facilities (visual impact)	Yes	The parking facilities will not have any unreasonable visual impact and will not be readily visible from the road.	Yes
CL72 Traffic access & safety	Yes	The existing approved access is to remain.	Yes
CL73 On-site Loading and Unloading	No		N/A
CL74 Provision of Carparking	Yes	Two spaces provided for the dwelling.	Yes
CL75 Design of Carparking Areas	Yes	No changes proposed to the approved garage.	Yes
CL76 Management of Stormwater	Yes	Council's Development Engineers have assessed the proposal and raised no concerns, subject to the previously imposed conditions.	Yes
CL77 Landfill	Yes	The modifications do not result in significant landfill.	Yes.
CL78 Erosion & Sedimentation	Yes	Standard conditions of consent will ensure erosion and sedimentation is contained during construction.	Yes
CL79 Heritage Control	No		N/A
CL80 Notice to Metropolitan Aboriginal Land	Yes	The application was referred to the AHO who have not responded. However, as part of the original application	Yes



General Principles	Applies	Comments	Complies
Council and the National Parks and Wildlife Service		assessment, a site visit was conducted with an officer of the AHO including a walk over and inspection of the entire site, not just the areas proposed for building. No evidence of any Aboriginal artefacts was discovered, and in this regard it is assumed that the AHO has no comments and no conditions with regard to the proposed modifications. The existing condition 16 <i>Aboriginal Heritage</i> will remain on the consent, and requires works to cease and the relevant authorities to be notified if any aboriginal site or object is discovered during works.	
CL82 Development in the Vicinity of Heritage Items	No		N/A
CL83 Development of Known or Potential Archaeological Sites	Yes	See Clause 80.	Yes

SCHEDULES

Schedule	Applicable	Compliant
Schedule 5 State policies	No	N/a
Schedule 6 Preservation of bushland	No	N/A
Schedule 7 Matters for consideration in a subdivision of land	No	N/A
Schedule 8 Site analysis	Yes	Yes
Schedule 9 Notification requirements for remediation work	No	N/A
Schedule 10 Traffic generating development	No	N/A
Schedule 11 Koala feed tree species and plans of management	No	N/A
Schedule 12 Requirements for complying development	No	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	No	N/A



Schedule	Applicable	Compliant
Schedule 14 Guiding principles for development near Middle Harbour	No	N/A
Schedule 15 Statement of environmental effects	No	N/A
Schedule 17 Carparking provision	Yes	Yes

OTHER RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS:

STATE ENVIRONMENTAL PLANNING POLICIES, REGIONAL ENVIRONMENTAL PLANS			
POLICY	ASSESSMENT	YES /NO /N/A	COMPLIES
SEPP - BASIX	BASIX Certificate supplied?	Yes – with the original application.	Yes
SEPP – 55	Based on the previous land uses if the site likely to be contaminated? Is the site suitable for the proposed land use?	No Yes	Yes
SEPP INFRASTRUCTURE	Is the proposal for a swimming pool, or Within 30m of an overhead line support structure? Within 5m of an overhead power line?	N/A	N/A
SREP-Sydney Regional Environmental Plan – Sydney Harbour Catchment (If applicable)		N/A	N/A

EPA REGULATION CONSIDERATIONS:

Regulation Clause	Applicable	Conditioned
Clause 54 & 109 (Stop the Clock)	No	N/A
Clause 92 (Demolition of Structures)	Yes	Yes
Clause 92 (Government Coastal Policy)	No	N/A



Regulation Clause	Applicable	Conditioned
Clause 93 & 94 (Fire Safety)	No	N/A
Clause 94 (Upgrade of Building for Disability Access)	No	N/A
Clause 98 (BCA)	Yes	Yes

REFERRALS

Referral Body Internal	Comments	Consent Recommended
Development Engineers	The proposed MOD is for the relocation of tennis Court, Stables and reduced driveway areas. No Development Engineering objection to the proposed development with the engineering conditions to remain the same.	Yes
Landscape	No objections to the proposed modification. Original conditions still relevant.	Yes
Environmental Health and Protection	Approval – subject to previous conditions.	Yes
Natural Environment Unit (NEU) - Biodiversity	Past inspections and aerial imagery indicates bushland / property adjoining the development has been encroached upon. The bushland to the east and north have mapped threatened species. A fence installed along the surveyed north and east boundary is required to minimise future encroachments and possible impacts on threatened species.	Yes – subject to condition
NEU – Riparian	The relevant documents relating to the modification to move the location of the tennis court, stables and arena have reviewed. A site inspection was undertaken in 2013 when the original DA was submitted to Council. The watercourse is shown on SEA is incorrect and is not located on the development site, but on the adjoining property Lot 163 DP 752038 Morgan Road. Therefore a riparian assessment is not required. No objection to approval and no conditions are recommended.	Yes
NEU - Drainage	Please see the Development Engineering comments for any relevant stormwater drainage asset comments and conditions.	Yes



Referral Body External	Comments	Consent Recommended
NSW Rural Fire Service	The RFS has no objection to the proposed modifications subject to application of our previous recommended conditions dated 26 August 2013.	Yes
Aboriginal Heritage Office	The application was referred to the AHO who have not responded. However, as part of the original application assessment, a site visit was conducted with an officer of the AHO including a walk over and inspection of the entire site, not just the areas proposed for building. No evidence of any Aboriginal artefacts was discovered, and in this regard it is assumed that the AHO has no comments and no conditions with regard to the proposed modifications. The existing condition 16 <i>Aboriginal Heritage</i> will remain on the consent, and requires works to cease and the relevant authorities to be notified if any aboriginal site or object is discovered during works.	Yes

APPLICABLE LEGISLATION/ EPI'S /POLICIES:	
EPA Act 1979	Yes
EPA Regulations 2000	Yes
Disability Discrimination Act 1992	No
Local Government Act 1993	Yes
Roads Act 1993	No
Rural Fires Act 1997	Yes
RFI Act 1948	No
Water Management Act 2000	No
Water Act 1912	No
Swimming Pools Act 1992	Yes
SEPP No. 55 – Remediation of Land	Yes
SEPP No. 64 – Advertising and Signage	No
SEPP No. 71 – Coastal Protection	No
SEPP BASIX	Yes



APPLICABLE LEGISLATION/ EPI'S /POLICIES:	
SEPP Infrastructure	Yes
WLEP 2000	Yes
WDCP	Yes
S94A Development Contributions Plan	Yes
NSW Coastal Policy (cl 92 EPA Regulation)	No

Section 79C "Matters for Consideration"	
Section 79C (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 79C (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	Yes
Section 79C (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 79C (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	N/A
Section 79C (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 79C (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 79C (1) (c) – Is the site suitable for the development?	Yes
Section 79C (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	N/A
Section 79C (1) (e) – Is the proposal in the public interest?	Yes

SECTION 3 – SITE INSPECTION ANALYSIS



SITE DESCRIPTION

The site is on the northern side of Morgan Rd. It slopes up quite steeply from the road before flattening out and falling away towards the north eastern corner of the site. The site is well vegetated, however the areas proposed for works under the current application are generally clear of significant trees. The site has a surveyed area of 1.992ha.

Site constraints and other considerations	
Bushfire Prone?	Yes
Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse?	No
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?	No
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No



Site constraints and other considerations	
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	No
Does the development require concurrence?	No
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument?	Yes
Does the proposal impact upon any easements / Rights of Way?	No

SITE INSPECTION / DESKTOP ASSESSMENT UNDERTAKEN BY: David Auster

Does the site inspection Section 3 confirm the assessment undertaken against the relevant EPI's Section's 1 & 2?	Yes
Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?	No
Are there any existing unauthorised works on site?	Yes – there appears to have been unauthorised tree removal.
If YES has the application been referred to compliance section for comments?	Yes – CRM raised for investigation.

Signed

Date

David Auster, Planner

SECTION 4 – APPLICATION DETERMINATION

Conclusion:

The proposal has been assessed against the relevant matters for consideration under Section 79C and 96(1A) 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.

RECOMMENDATION - APPROVAL

That Council as the consent authority:

APPROVE THE MODIFICATION OF THE DEVELOPMENT CONSENT subject to:

The following additional conditions detailed within the associated notice of determination; and

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
I 012 Revision 5	01/07/14	MJ Shepherd & Co Pty Ltd
I 013 Revision 5	01/07/14	MJ Shepherd & Co Pty Ltd
I 014 Revision 5	01/07/14	MJ Shepherd & Co Pty Ltd
I 015 Revision 5	01/07/14	MJ Shepherd & Co Pty Ltd
I 016 Revision 5	01/07/14	MJ Shepherd & Co Pty Ltd
I 017 Revision 5	01/07/14	MJ Shepherd & Co Pty Ltd

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. (DACPLB01)

B. Add Condition 15A *Protection of Bushland Fencing* in the section "Conditions That Must Be Addressed Prior To Any Commencement" to read as follows:

To protect bushland from encroachment, the property boundary must be surveyed and a permanent boundary fence installed along the north and east boundary.

The fence shall conform to the specification for bush protection fencing consisting of 1150mm high galvanised hinge joint fencing (8/115/30) (Stocktite or similar) fixed to fence with 3x strands 3.15mm galvanised fencing wire. Posts are to be capped, 50mm round galvanised pipe at 3m centres. End posts are to be stayed with galvanised pipe stay every 15m. Inline stays are to be fixed to 50mm post. Posts are to be concreted into the ground.

Alternative fencing design options must be approved by Council in writing.

Details demonstrating compliance is to be submitted to the Principal Certifying Authority.



Reason: Bushland Protection. (DACNED02)

"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

Date

David Auster, Planner

The application is determined under the delegated authority of:

Signed

Date

Tony Collier, Planning Assessment Manager