

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2017/0030
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<b>Responsible Officer:</b>	Adam Mitchell
<b>Land to be developed (Address):</b>	Lot 1 DP 175452, 16 The Drive FRESHWATER NSW 2096
<b>Proposed Development:</b>	Modification of Development Consent DA2016/0903 granted for Construction of a secondary dwelling - Modification to delete the secondary dwelling and use the floor space as part of the existing dwelling house
<b>Zoning:</b>	LEP - 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>	Graham Craig Opie Rosemary Edith Booker
<b>Applicant:</b>	Graham Craig Opie Rosemary Edith Booker

<b>Application lodged:</b>	16/02/2017
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	22/02/2017 to 09/03/2017
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP
<b>Submissions:</b>	0
<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 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

<b>Property Description:</b>	Lot 1 DP 175452 , 16 The Drive FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site is located on the northern side of The Drive in Freshwater. The Drive is a small loop-road accessible via Evans Street to the west and Carrington Parade to the east.</p> <p>The site is zoned for R2 Low Density Residential.</p> <p>The site is irregular in shape (trapezoidal) and has a surveyed area of 431.4 square metres with a frontage to The Drive of 12.115 metres and depths of 23.38 metres and 35.375 metres.</p> <p>Presently the site accommodates a one, two and three storey dwelling. A single garage is present on the lower ground floor and the first floor has been recently constructed. A timber deck is present in the rear of the site.</p> <p>Surrounding developments consist of a variety of detached dwellings and residential apartment buildings of varying architectural period, scale and construction. Directly south of the site is the Harbord Digger's site which is currently undergoing extension excavation and construction.</p> <p>Topographically, the subject site inclines from south to north by approximately 14.0 metres and has significant rock outcrops to the rear of the site.</p> <p>The site has numerous mature trees throughout the back yard.</p>

Map:



## SITE HISTORY

### Development Application No. 2016/0903

This is the parent DA of the subject Section 96 application and was for the construction of a secondary dwelling.

The application was approved on 23 September 2016

## PROPOSED DEVELOPMENT IN DETAIL

This modification application pursuant to Section 96(2) of the Environmental Planning and Assessment Act seeks to modify the development approved under development consent DA2016/0903.

The approved development was for the construction of several rooms and use as a secondary dwelling within the existing garage area.

The current application seeks to keep the approved built structure, but remove the use as a secondary dwelling. As such, the works are to be considered as an additional to the existing dwelling. Further to the change of use, this application proposes the introduction of an internal staircase to connect the addition to the main dwelling.

The works proposed under this application are largely the same as the previous approval and, from the public domain, no changes will be discernible.

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 C.

## 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:

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- 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 DA2016/0903, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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 DA2016/0903.
(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 DA2016/0903 did not require concurrence from the relevant Minister, public authority or approval body.
(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 Local Environment 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.	No submissions were received in relation to this application.

## Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an

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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)	<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>Clause 92</u> of the EP&amp;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>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 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><b>(i) 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><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) 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 79C (1) (c) – the suitability of the site for	The site is considered suitable for the proposed

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Section 79C 'Matters for Consideration'	Comments
the development	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 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
Building Assessment - Fire and Disability upgrades	The modified application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to deletion of conditions 5, 8 & 10 and it is recommended that inclusion of a condition advising that there be no cooking facilities allowed in the bar area.

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.

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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)

Nil

## 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

This Section 96 application does not propose any amendments to the Principal Development Standards approved under DA2016/0903 and as such, an assessment against the applicable clauses is not required.

## Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
6.4 Development on sloping land	Yes

## Warringah Development Control Plan

### Built Form Controls

This Section 96 application does not propose any amendments to the built form controls approved under DA2016/0903 and as such, an assessment against the applicable clauses is not required.

## Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	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

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.

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 Modification Application No. Mod2017/0030 for Modification of Development Consent DA2016/0903 granted for Construction of a secondary dwelling - Modification to delete the secondary dwelling and use the floor space as part of the existing dwelling house on land at Lot 1 DP 175452, 16 The Drive, FRESHWATER, subject to the conditions printed below:

**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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
334 Rev B	2 February 2017	Pacific Plans

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)

**Add Condition No. 11 - Occupancy - to read as follows:**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

A dwelling house is defined as:

*“Dwelling house means a building containing only one dwelling.”*

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent. (DACPLB03)

**Delete Condition No. 5 - Change of use/Fire Safety Upgrade**

**Delete Condition No. 5 - Change of Use**

**Delete Condition No.10 - Fire Safety Matters**

**Add Condition No. 11 - No Cooking Facilities - to read as follows:**

There are to be no cooking facilities in the Bar Area located on the lower ground floor.

Reason: To ensure the area is used in accordance with this consent and not as a secondary dwelling.

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**

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**Adam Mitchell, Planner**

The application is determined under the delegated authority of:


**Rodney Piggott, Development Assessment Manager**

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## ATTACHMENT A













Notification Plan	Title	Date
 2017/047885	Plan - Notification	10/02/2017

## ATTACHMENT B

Notification Document	Title	Date
 2017/049962	Notification Map	21/02/2017

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## ATTACHMENT C

Reference Number	Document	Date
 2017/068616	Building Assessment Referral Response	19/01/2017
 2017/047883	Plans - Survey	10/02/2017
 2017/047885	Plan - Notification	10/02/2017
 2017/047887	Report - Statment Of Environmental Effects	10/02/2017
 2017/047943	Plans - Master Set	10/02/2017
 MOD2017/0030	16 The Drive FRESHWATER NSW 2096 - Section 96 Modifications - Section 96 (2) Environmental Impact	16/02/2017
 2017/044357	DA Acknowledgement Letter - Rosemary Edith Booker - Graham Craig Opie	16/02/2017
 2017/047827	Modification Application Form	20/02/2017
 2017/047829	Applicant Details	20/02/2017
 2017/047940	Report - Statement of Environmental Effects	20/02/2017
 2017/049962	Notification Map	21/02/2017
 2017/049964	Notification Letter - Mod - 7	21/02/2017