

DA Consent No. REV 2010/0058
Address: 6 Bedford Crescent COLLAROY
Applicant: Mr B E P Nash

SECTION 96(2) REVIEW REPORT

**THIS SECTION 96(2) APPLICATION SEEKS TO
AMEND/MODIFY THE APPROVED DEVELOPMENT CONSENT
NO. REV 2010/0058.**

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1.0 HISTORY

Application/Consent

REV 2010/0058

On 24 March 2011, Warringah Council issued development consent to development application 2010/0058 for *'demolition works and construction of a dwelling house and pool'*.

2.0 THE PROPOSAL

This Section 96(2) application seeks approval to modify Development Consent REV 2010/0058 by adding additional plan reference numbers to the table provided in Condition 1 as follow:

In relation to condition 1, this application seeks to include the amended architectural drawings prepared by Frank Takos & Assoc. being drawing no.s A 14-09-02-1 to A 14-09-02-6 dated Sept. & Oct 2014 as shown below in the amended table.

Architectural Plans-Endorsed with Council's stamp				
Drawing No.	Title	Revision	Dated	Prepared by
2009/12(1)	Calculations & Plans	B	January 2010	Max Lanser Architect
2009/12(2)	Elevations and Sections	B	January 2009	Max Lanser Architect
A 14-09-02-1	Existing Ground Floor plan	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-2	Existing First Floor Plan	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-3	Proposed Ground Floor	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-4	Proposed First Floor	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-5	Elevations	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-6	BASIX-Section 96	Nil	Oct 2014	Frank Takos & Assoc.

The above architectural drawings referred to and prepared by Frank Takos & Assoc., seek approval to modify the approved dwelling house as listed below:

Carport:

- Provide a new gable roof to equal width of external entry stairs from car port to level with end of stairs; and
- Provide new gable roof to equal width of external entry stairs wide from house to level with end of stairs

First Floor:

- Provide a new replacement layout that will now provide a dining room, kitchen and lounge room with BSN and relocated WC instead of the proposed 2 bedrooms, hall, lobby and separate wc and shower ; and

- Remove the posts on the northern elevation and the proposed sliding doors onto the balcony and replace with Bi-fold doors; and
- Provide the access to the proposed house from the carport now to this level instead of the ground floor as proposed under the original approval.

Ground Floor:

- Provide 4 bedrooms and TV/Family room and retain the bathroom , ensuite and walk-in-robe instead of the prior approved layout that was to provide guest room, dining room, combined kitchen and family room; and
- Delete the proposed direct access from the carport to this level.

Lower Ground Floor:

- No changes proposed to this level under this Section 96 application; and

Northern (Rear) Elevation:

- Proposed removal of the HWD posts and the sliding doors and replace with Bi-fold doors only to the first floor level

South (Front) Elevation:

First Floor

- Move access to the house from the carport to the first floor level instead of the ground level; and
- Delete skillion roof over stairs and install new stepped two level gable roof over stairs to house; and
- Delete the fixed glazing and install glass louvers of same size; and
- Delete the glazed door and install obscure glazed window of same size; and
- Provide a door/sidelight instead of just a door

Further, this statement should be read in conjunction with the following Section 96 Review documents being:

- BASIX Certificate; and
- Frank Takos & Assoc.

Please note that the proposed design changes to the ground and first floors will not alter the approved impervious and soft landscaping calculations or increase the approved floor space ratio or height of the building **as part of this Section 96(2) application.**

3.0 PLANNING CONTROLS

The relevant statutory instrument in this instance is the Environmental Planning and Assessment Act 1979 (as amended) and the relevant sections of this instrument applicable to this application is Section 96 of the Environmental Planning and Assessment Act 1979 (as amended).

Section 96

96 Modification of consents—generally

(1) Modifications involving minor error, misdescription or miscalculation

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 a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5), (6) and (7) do not apply to such a modification.

(1A) Modifications involving minimal environmental impact

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 proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (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 that requires the notification or advertising of applications for modification of a development consent, and
- (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.

Subsections (1), (2) and (5) do not apply to such a modification.

(2) Other modifications

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
- (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
- (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 that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

(3) In determining an application for modification of a consent under this section, 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.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(5) Threatened species

Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:

(a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or

(b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

(6) Appeals

An applicant who is dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days after the application is made may appeal to the Court and the Court may determine the appeal.

(6A) (Repealed)

(7) Subsection (6) does not enable an appeal to be made against the determination of, or the failure to determine, an application to modify a development consent, being a development consent granted by the Court.

(8) Modifications by the Court

The provisions of this section extend, subject to the regulations, to enable the Court to modify a consent granted by it but, in the extension of those provisions, the functions imposed on a consent authority under subsection (1A) (c) or subsection (2) (b) and (c) are to be exercised by the relevant consent authority and not the Court.

Section 96 (2) section of the E.P. & A. Act permits Council to “modify the development consent” subject to certain criteria.

Later in this report it will be demonstrated that the proposed amended wording for Condition 1 of Development Consent REV 2010/0058 will have no, if any environmental impact beyond that approved under DA REV 2010/0058.

Also approval of this Section 96(2) will still produce **substantially the same development**, (if/and) when an approval is issued for the proposed rewording

of Condition 1 sought under this Section 96(2) application to Development Consent No REV 2010/0056 at 6 Bedford Cres COLLAROY.

4.0 SECTION 96(2) REQUEST

Section 96(2) of the Environmental Planning and Assessment Act allows Council to consider and consent to changes to any issued development consent as detailed below.

(2) **Other modifications**

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*
- (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*
- (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 that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

This Section 96(2) application seeks approval to modify Development Consent REV 2010/0058 by adding additional plans references within the table provided in Condition 1 as follow:

Architectural Plans-Endorsed with Council's stamp				
Drawing No.	Title	Revision	Dated	Prepared by
2009/12(1)	Calculations & Plans	B	January 2010	Max Lanser Architect
2009/12(2)	Elevations and Sections	B	January 2009	Max Lanser Architect
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A 14-09-02-2	Existing First Floor Plan	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-3	Proposed Ground Floor	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-4	Proposed First Floor	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-5	Elevations	Nil	Sept. 2014	Frank Takos & Assoc.

A 14-09-02-6	BASIX-Section 96	Nil	Oct 2014	Frank Takos & Assoc.
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Please note that the proposed design changes to the ground and first floors will not alter the approved impervious and soft landscaping calculations or increase the approved floor space ratio or height of the building **as part of this Section 96(2) application.**

5.0 REASONS TO SUPPORT SECTION 96(2) APPLICATION.

This Section 96(2) application seeks approval to modify Development Consent REV 2010/0058 by adding additional plans references within the table provided in Condition 1 as follow:

Architectural Plans-Endorsed with Council's stamp				
Drawing No.	Title	Revision	Dated	Prepared by
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A 14-09-02-2	Existing First Floor Plan	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-3	Proposed Ground Floor	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-4	Proposed First Floor	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-5	Elevations	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-6	BASIX-Section 96	Nil	Oct 2014	Frank Takos & Assoc.

The following reasons are provided to justify support of this Section 96(2) application:

- The design change proposed, to relocate the primary living, dining and cooking functions from the ground level to the first floor level that will have direct access to and from the carport is a more efficient and functional layout; and
- The provision of a single bi-fold door instead of 2 bi-fold doors to the first floor rear elevation will provide a greater cooling effect within this area and thereby be more energy efficient for users of the building; and
- The proposed change of operational spaces of the approved layout to the new proposed layout will create both a more functional dwelling as well as provide a better safe internal environment as less internal stair movement is required from the carport to the primary living/dining/kitchen area.

Overall Comment on assessment of Section 96(2)

Accordingly, there appears no reason available not to support this Section 96(2) application for the proposed rewording of Condition 1 as there is no increase in impacts above those approved under DA Review 2010/0058. Therefore in light of this conclusion, it is now recommended that this Section 96(2) application is approvable by Council.

6.0 EVALUATION UNDER SECTION 96(2) REQUEST

Any Section 96 (2) application must demonstrate that the proposed modifications “*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)*”. Clause 96(2) is reproduced below:

(2) Other modifications

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*
- (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*
- (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 that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment on Criteria of (2) above

Section 96(2) specifies that Council can “*modify a (development) consent subject to the following criteria under (a) to (d):*

- (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*

Comment

This Section 96(2) application seeks approval to modify Development Consent REV 2010/0058 by adding additional plans references within the table provided in Condition 1 as follow:

Architectural Plans-Endorsed with Council's stamp				
Drawing No.	Title	Revision	Dated	Prepared by
2009/12(1)	Calculations & Plans	B	January 2010	Max Lanser Architect
2009/12(2)	Elevations and Sections	B	January 2009	Max Lanser Architect
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A 14-09-02-3	Proposed Ground Floor	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-4	Proposed First Floor	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-5	Elevations	Nil	Sept. 2014	Frank Takos & Assoc.
A 14-09-02-6	BASIX-Section 96	Nil	Oct 2014	Frank Takos & Assoc.

(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

Comment

Not required under this application.

(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 that requires the notification or advertising of applications for modification of a development consent, and*

Comment

To determine if notification of this Section 96(2) application is required is to be determined by Council.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment

No submission required at this stage. However this assessment is to be undertaken by Warringah Council.

Overall Comment

Accordingly, it is considered the development as proposed to be modified will have minimal if any additional detrimental environmental impact and continue to be **“substantially the same development”** as the development approved under Development Consent Rev 2010/0058.

Due to the above conclusion, it is considered that this Section 96(2) meets and satisfies subclause (a) to (d) criteria and **as such is supportable and approvable** by Warringah Council.

Conclusion

It can be seen from the above comments that this Section 96 (2) application is considered to be *“as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all),”*. Therefore this application both meets and satisfies the Section 96(2) criteria and as such **can be approved** by Council under this Section of the E.P. & A. Act.

7.0 OVERALL CONCLUSION

The Section 96(2) application lodged with Warringah Council meets the requirements of Section 96(2), in that the application is considered to be “*as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)*” has been demonstrated earlier in this report due to the following reasons:

Accordingly, this Section 96(2) application can be supported and as such Development Consent No. Rev 2010/0058 can be modified to permit the following amendment of Condition 1 wording as follows:

Therefore it is considered that as this proposal, after approval of the Section 96(2) application will continue to provide the outcome sought to be achieved under Development Consent Rev No. 2010/0058.

Having regard to all facts and conclusions presented in this report, it is now recommended that this Section 96(2) application seeking approval for proposed changes to Development Consent Rev No. 2010/0058 at 6 Bedford Cres COLLAROY PLATEAU **be approved** by Warringah Council.

A handwritten signature in black ink, appearing to read 'Greg Foster', with a small dot at the end.

Prepared by Greg Foster
Principal Planner of
GM Planning Services