

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2014/0154
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 65 DP 211662 , 38 Kirkstone Road WHEELER HEIGHTS NSW 2097
Proposed Development:	Modification of Development Consent DA2008/1748 granted for alterations and additions to an existing 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:	Tomer Ravid-Shimshon Michal Ravid-Shimshon
Applicant:	Tomer Ravid-Shimshon

Application lodged:	24/07/2014
Application Type:	Local
State Reporting Category:	Other
Notified:	Not Notified
Advertised:	31/07/2014
Submissions:	0
Recommendation:	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

Property Description:	Lot 65 DP 211662 , 38 Kirkstone Road WHEELER HEIGHTS NSW 2097
Detailed Site Description:	The subject site is located on the western side of Kirkstone Road. The site is a rectangular shape with a frontage of 15.2m and a depth of 36.5m. The site has a surveyed area of 557.4 sqm and drains to the rear (west) with moderate fall of 6m. The site currently contains a partly renovated two storey, three bedroom home. Surrounding development consists of detached housing in a low density landscaped setting. There are no significant rock outcrops on the site and the land is not bushfire prone or subject to flooding.

Map:



SITE HISTORY

Building Application No.1011/65 for a brick veneer dwelling house was approved by Council in 1965.

Building Application No.887/70 for brick additions was approved by Council in 1970.

Development Application No.2008/1748 for alterations and additions to a dwelling house was approved by Council on 17 March 2009. (CC2011/0856 issued)

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification of consent includes the following building changes:

- Front fence of block wall and timber batten fencing 1.8m to 1.2m;
- Change to west elevation ground floor rumpus room door;
- Increase first floor rear deck width;
- Change to living room window and door opening;
- New window and shade cover to north elevation ground floor;
- Enlarge ground floor rumpus room;
- Paving and decking extension with ancillary works.

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: 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 DA2008/1748, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1A) - 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,	

Section 96(1A) - Other Modifications	Comments
modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) 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 DA2008/1748.
(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.	See discussion on “Public Exhibition” in this report.

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 'Matters for Consideration'	Comments
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – 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)	<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 consent. <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. <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. <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 matter has been addressed via a condition in the original consent. <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. <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.
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 'Matters for Consideration'	Comments
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed 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
Development Engineers	The proposed modification to the existing approval of DA2008/1748 has been assessed and there is no impact to Council's drainage system as part of the modification. The applicant is proposing to construct a 1.8 metre high fence along the front boundary as part of the application. The existing crossing is quite narrow and in order to improve sight distance for vehicles exiting the site it is considered that the crossing must be widened as part of the works. A condition for this requirement has been included. No objection to approval, subject to conditions as recommended.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the original development application (see Certificate No. A51033 dated 19 January 2009) and the modifications do not affect the Basix commitments made.

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	Achievable
Thermal Comfort	Pass	Achievable
Energy	40	Achievable

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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 for the modification.

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 continuing residential land use with the modifications.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Minimum subdivision lot size:	600m ²	557.4m ²	No change	(As approved)	No (Existing)
Height of Buildings:	8.5m	6.8m	No change (Balcony height 4.2m) (Fence 1.2m to 1.8m)	N/A	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	5.7m	5.7m (No change)	Yes
B3 Side Boundary Envelope	45 degrees at 4m	Encroachment	No change	No (As approved)

B3 Side Boundary Envelope	45 degrees at 4m	Encroachment	No change	No (As approved)
B5 Side Boundary Setbacks	0.9m	1.3m	1.3m (Wall - No change)	Yes
B5 Side Boundary Setbacks	0.9m	1.1m	1.1m (Wall - No change)	Yes
B7 Front Boundary Setbacks	6.5m	11.9m	11.9m (Facade - No change) 7.1m (Deck - No change)	Yes
B9 Rear Boundary Setbacks	6m	16.1m	12.0m (Rumpus) 10.7 (Deck)	Yes
D1 Landscaped Open Space and Bushland Setting Site area 557sqm	40% (222sqm)	51% (280sqm)	42% (236sqm)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
R2 Side Boundary Envelope Exceptions	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side Setback Exceptions - R2	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
Front Boundary Exceptions - All Zones	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
Rear Boundary Exceptions - R2	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Easements		
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	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. Mod2014/0154 for Modification of Development Consent DA2008/1748 granted for alterations and additions to an existing dwelling on land at Lot 65 DP 211662,38 Kirkstone Road, WHEELER HEIGHTS, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-01 Site Plan	15.7.14	Novam Studio Design

A-02 Ground Floor Plan	15.7.14	Novam Studio Design
A-03 First Floor Plan	15.7.14	Novam Studio Design
A-04 Roof Plan	15.7.14	Novam Studio Design
A-05 Elevations Sheet 1	15.7.14	Novam Studio Design
A-06 Elevations Sheet 2	15.7.14	Novam Studio Design
A-07 Elevations Sheet 3	15.7.14	Novam Studio Design
A-08 Sections Sheet 1	15.7.14	Novam Studio Design

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

c) The development is to be undertaken generally in accordance with the following:

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Add Condition No. 4A - Fencing Details, to read as follows:

The fence height is limited to a maximum of 1.2m to 1.8m for the stepped sections/panels across the front of the site. Spacing between the selected battens is to be equivalent to the batten width.

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

Reason: Front Boundary Fencing (DACPLC10)

C. Add Condition No. 4B - Vehicle Crossings Application Formwork Inspection, to read as follows:

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

D. Add Condition No.4C - Structural Adequacy and Excavation Work, to read as follows:

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary; and

(b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: Safety. (DACENC19)

E. Add Condition No. 14A - Public Liability Insurance - Works on Public Land, to read as follows:

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

F. Add Condition No. 23A - Property Boundary Levels, to read as follows:

The property boundary levels shall match the existing levels except where modified for the vehicular crossing to ensure adequate sight safety distance due to the new fencing/gate work. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve. (DACENE01)

G. Add Condition No. 23B - Vehicle Crossings, to read as follows:

The provision of one vehicle crossing 3.5 metres wide at the boundary to 4 metres wide at the kerb in accordance with Warringah Council Drawing No A4-3330/3 Normal Low and specifications, to ensure adequate sight safety distance due to the new fencing/gate work. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

H. Add Condition 23C. - Layback Construction, to read as follows:

A layback 4 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications as applicable for any replacement/upgrade of the driveway for access, due to sight restriction by the new masonry fencing and narrow entry.

Reason: To ensure suitable vehicular access to private property and safe access. . (DACENE08)

I. Add Condition No. 25A - Reinstatement of Kerb, to read as follows:

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

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

Alex Keller, Senior Development Planner

The application is determined under the delegated authority of:

Tony Collier, Development Assessment Manager

ATTACHMENT A

Notification Plan	Title	Date
 2014/229446	Plans Notification	25/07/2014

ATTACHMENT B

Notification Document	Title	Date
 2014/235214	Notification map	31/07/2014

ATTACHMENT C

Reference Number	Document	Date
 2014/229449	Plans Master Set	22/07/2014
 MOD2014/0154	38 Kirkstone Road WHEELER HEIGHTS NSW 2097 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	24/07/2014
 2014/228348	invoice for ram applications - Tomer Ravid-Shimshon	24/07/2014
 2014/228352	DA Acknowledgement Letter - Tomer Ravid-Shimshon	24/07/2014
 2014/229436	Modification application form	25/07/2014
 2014/229443	Applicant Details & Cost summary report	25/07/2014
 2014/229446	Plans Notification	25/07/2014
 2014/229447	Plans External Layout	25/07/2014
 2014/232157	File Cover	29/07/2014
 2014/232172	Referral to AUSGRID - SEPP - Infrastructure 2007	29/07/2014
 2014/235210	Notification letter 8	31/07/2014
 2014/235214	Notification map	31/07/2014
 2014/281053	Development Engineering Referral Response	11/09/2014