

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2016/0043
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Responsible Officer:	Kevin Short
Land to be developed (Address):	Lot 2 DP 1192794, 32 A Kens Road FRENCHS FOREST NSW 2086
Proposed Development:	Modification of Development Consent DA2012/0795 granted for demolition work, alterations and additions, construction of a new dwelling house and subdivision
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:	Neil Ian Lotter Gillian Margaret Lotter
Applicant:	Cvma Architects

Application lodged:	22/02/2016
Application Type:	Local
State Reporting Category:	Residential - Alterations and additions
Notified:	17/03/2016 to 05/04/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	1
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

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 2 DP 1192794 , 32 A Kens Road FRENCHS FOREST NSW 2086
Detailed Site Description:	The site has been recently subdivided into two allotments as per DA2012/0795. The site is now known as Lot 1 and Lot 2, DP 1192794 (No. 32 and No. 32A Kens Road) and is located on the eastern side of Kens Road in Frenchs Forest. No. 32 Kens Road is currently occupied by a two storey dwelling with double garage and swimming pool and has an approximate site area of 837m². No. 32A Kens Road is a vacant lot with a size of 743m². The site slopes steeply to the south west with a fall of 9.34m from the existing dwelling to the southern boundary. Large and steep rock cliffs and rock outcrops are located on site. A large rock shelf traverses the site from the north western corner to the south eastern corner. This modification application relates only to one allotment, being No.32A Kens Road. The approved dwelling house on this lot has been substantially completed.

Map:



SITE HISTORY

DA2012/0795

Development consent for Subdivision - Demolition works, Alterations and additions to the existing dwelling, Construction of a dwelling house and Subdivision of land was approved on 9 September 2012.

Mod2013/0024

Section 96 (1) Modification of Development Consent DA2012/0795 was approved on 15 March 2013.

SC2014/0009

Subdivision Certificate SC2014/0009 for Torrens Title subdivision was issued on 9 April 2014. The subdivision created the following lots;

- Lot 1 DP 1192794 (32 Kens Road Frenchs Forest)
- Lot 2 DP 1192794 (32A Kens Road Frenchs Forest)

Mod2014/0112

Section 96 (1A) Modification of Development Consent DA2012/0795 was approved on 11 August 2014.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent No.2012/0795 in accordance with the provisions of Section 96 (1A) of the Environmental Planning and Assessment Act 1979.

Specifically, modifications sought to the approved development relate to Lot 2 DP 1192794 (32A Kens Road) and comprise the following;

Garage Level

- Increase excavation behind Gym/Games Room to provide Bathroom and Storage; and
- Revised finished garage floor level and decrease size of Gym/Games Room to provide by 12.0m² to provide outdoor covered area.

Level 1

- Minor reduction in area to street (west) facing balcony, removal of balcony blade wall and provision of glass balustrade;
- Further excavation works to create Hall (north-eastern portion of dwelling);
- Minor internal alterations and additions; and
- Alterations to the number, size and location of windows.

Level 2

- Minor internal alterations and additions, including the roof; and
- Alterations to the number, size and location of windows.

The modification works have been substantially completed, including the south facing windows on Level 1 & 2 and Garage Level Bathroom and storage rooms.

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 DA2012/0795, 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, 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 DA2012/0795.
(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 (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>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 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Gary Allan Pickworth Mrs Tina Jane Pickworth	34 Kens Road FRENCHS FOREST NSW 2086

The following issues were raised in the submissions and each have been addressed below:

- **Privacy - overlooking from south facing elevation**
- **Overshadowing**
- **Drainage and retaining wall**

The matters raised within the submissions are addressed as follows:

- **Privacy - overlooking from south facing elevation**

Concern is raised in relation to the potential for close and direct overlooking from the southern elevation of the proposed dwelling into the adjoining dwelling house to the south located at No.34 Kens Road.

A detailed assessment of privacy is provided under the WDCP - D8 Privacy section of the report. Following an inspection of the subject dwelling and already constructed windows, overlooking between properties is prevented from the subject dwelling by the following;

- The southern side boundary fence on the Garage Floor level (yet to be constructed);
- Applicable and current Conditions of Consent requiring obscure glazing on selected Level 1 & 2 level south facing windows; and
- A condition for the provision of 1.3m high balustrade adjacent to the Level 2 Deck.

The above privacy treatments will prevent close and direct overlooking of the adjoining property to the south.

Also, the submission raises concern with a '*ledge/roof/balcony*' with an associated handrail located adjacent to the

first floor level southern elevation. This area is depicted on the architectural plans as 'colorbond roof' with an associated roof mounted 1.3m high privacy screen. These areas are therefore non-habitable area, regardless of whether access via an openable window is possible or not.

This matter does not warrant refusal of the application.

- **Overshadowing**

Comment:

The concern is that the modified proposal will cause a '*probable loss of winter sun*' to the adjoining dwelling house to the south located at No.34 Kens Road. The proposed modifications to the external elevations and roof form and height are minor and do not translate to additional overshadowing of adjoining properties, including No.34 Kens Road. In this regard, the development as modified will remain compliant with WDCP - D6 Access to Sunlight.

This matter does not warrant refusal of the application.

- **Rear setback non compliance**

Concern is raised that the application should be refused as it contravenes Council's own planning parameters as it infringes the 6.5m setback at the rear and that the changes to the front balcony do not compensate for this contravention.

Comment:

The proposal complies with the minimum rear boundary setback specified under B9 - Rear Boundary Setbacks of the WDCP.

The proposed modification to the first floor balcony results in a minor non compliance with the front boundary setback control. This matter is addressed in detail elsewhere within this report (refer to B7 - Front Boundary Setback under the WDCP). In summary, the variation to the control is supported in this instance as it is minor in nature, provides a more usable area for dwelling occupants and does not result in unreasonable visual impact on the Kens Road streetscape.

Therefore, this matter does not warrant refusal of the application.

- **Drainage and retaining wall**

Concern is raised to the location of the retaining wall and footings and associated seepage. These matters are not part of this modification application and therefore are a matter for the private certifier (PCA) to address prior to issue of an occupation certificate.

This matter does not warrant refusal of the application.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	The proposed modifications do not impact upon the previously approved drainage system or vehicular access. No objection to approval and no additional or modified conditions are recommended.
Landscape Officer	No objections to the proposed modification

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

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.

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 (Lot 1 DP 1192794 , 32 Kens Road)	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.6m	7.63	N/A	Yes

Note: The development application does not relate to Lot 2425 DP 752038 (32 Kens Road Frenchs Forest). No change is proposed to this lot.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
4.3 Height of buildings	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.4 Development on sloping land

In summary, the original application (and subsequent modification application MOD2014/0112) were supported by Geotechnical Reports which provided recommendations and requirements in relation to excavation works and excavation of rock including appropriate work methods and vibration monitoring. Appropriate conditions were also included in the consent requiring compliance with the recommendation and requirements of the report(s).

However, this modification report involves further excavation works and an updated geotechnical report was not submitted with the application. As such, a condition has been included in the Recommendation of the report for an updated geotechnical report to be prepared for the development prior to the issue of the Occupation Certificate.

Warringah Development Control Plan

Built Form Controls

Standard (Lot 1 DP 1192794 , 32 Kens Road)	Requirement	Approved	Proposed	Complies

B1 Wall height	7.2m	7.2m	no change	Yes
B3 Side Boundary Envelope	4m	Maximum breach of 2.4m on the southern building elevation	no change	Yes
B5 Side Boundary Setbacks	0.9m	North: 2m South: 1m - 2m	no change no change	Yes Yes
B7 Front Boundary Setbacks	6.5m	5m to first floor balcony 6.5m to dwelling	no change no change	Yes Yes
B9 Rear Boundary Setbacks	6.0m	14.8m	no change	Yes
D1 Landscaped Open Space and Bushland Setting	40%	53.9% (400.6m ²)	no change	Yes

Note: The development application does not relate to Lot 2425 DP 752038 (32 Kens Road Frenchs Forest). No change is proposed to this lot.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D8 Privacy

The building has substantially been completed, including the relocated and altered windows of which are the subject of this modification application. A site inspection was carried out within the building to enable a complete and proper assessment of potential privacy impacts on the adjoining property to the south, No. 34 Kens Road.

Overlooking and casual surveillance of the adjoining properties, including No.34 Kens Road, is sufficiently prevented from the subject dwelling by the following;

- The southern side boundary fence on the Garage Floor level (yet to be constructed);

- Applicable and current Conditions of Consent requiring obscure glazing to a height of 1.65m on the Level 1 & 2 selected south facing windows;
- A condition for the provision of 1.3m high obscure glazed balustrade on the Level 2 Deck; and
- The location of the western elevation deck being located forward (west) of the dwelling at No.34 Kens Road.

The above privacy treatments will prevent close and direct overlooking of the outdoor principal living areas, habitable rooms and windows of the adjoining property to the south (No.34 Kens Road).

Currently, Condition of Consent No.16. Privacy requires specific privacy treatments to the dwelling, particularly on the southern elevation, including obscure window glazing. As per the Recommendation of the this modification assessment report, Condition No.16 Privacy will be modified to suit.

Having regard to the above, a satisfactory level of visual and acoustic privacy for occupants and neighbours is achieved.

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. Mod2016/0043 for Modification of Development Consent DA2012/0795 granted for demolition work, alterations and additions, construction of a new dwelling house and subdivision on land at Lot 2 DP 1192794,32 A Kens Road, FRENCHS FOREST, subject to the conditions printed below:

A. Add Condition No.1C - 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
DA - 02 Rev C	undated	CVMA Architects
DA - 03.1 Rev C	12/02/2016	CVMA Architects
DA - 03 Rev C	12/02/2016	CVMA Architects
DA - 04.1 Rev C	12/02/2016	CVMA Architects
DA - 04 Rev C	12/02/2016	CVMA Architects
DA - 05.1 Rev C	12/02/2016	CVMA Architects
DA - 05 Rev C	12/02/2016	CVMA Architects
DA - 06.1 Rev C	12/02/2016	CVMA Architects
DA - 06 Rev C	12/02/2016	CVMA Architects
DA - 07 Rev C	12/02/2016	CVMA Architects

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

B. Add Condition No.25A - Updated Geotechnical Report

An updated Geo-Technical Report and certificate shall be prepared by an appropriately qualified Geo-technical Engineer certifying that the existing rock formations and substrate on the site are capable of withstanding:

- (a) the proposed loads to be imposed;
- (b) the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
- (c) protection of adjoining properties;
- (d) the provision of appropriate subsoil drainage during and upon completion of construction works.

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

Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process.

C. Modify Condition No.16. *Window sill height and obscured glazing* to read as follows;

16. Privacy Treatments

The Level 1 south facing windows to Bed 01 & 02, Dining and Living rooms, as shown on the approved plans, are to have obscure glazing or obscure window film to a height of 1.65m (measured from finished floor level).

The Level 2 south facing window of the Bed 03 & Rumpus, as shown on the approved plans, are to have obscure glazing or obscure window film to a minimum height of 1.3m (measured from finished floor level). In this regard the Roof Mounted Privacy Screens are not required.

A 1.3m high obscure glass or solid balustrade is to be erected for the entire length of the outermost southern edge of the Level 2 Deck located off the Rumpus as shown on the approved plans.

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

Reason: In order to maintain privacy and amenity to the adjoining/nearby property to the south.

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

Kevin Short, Planner

The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2016/058867	Report - BASIX Certificate	21/02/2016
 2016/058869	Plans - Master Set	21/02/2016
 2016/058864	Report -Statement of Environmental Effects	21/02/2016
 2016/058853	Plans - Notification	21/02/2016
 MOD2016/0043	32 Kens Road FRENCHS FOREST NSW 2086 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	22/02/2016
 2016/055639	DA Acknowledgement Letter - Cvma Architects	22/02/2016
 2016/058856	Plans - External	24/02/2016
 2016/058857	Plans - Internal	24/02/2016
 2016/058848	Modification Application Form	24/02/2016
 2016/058850	Applicant Details	24/02/2016
 2016/074526	Development Engineering Referral Response	09/03/2016
 2016/078235	File Cover	14/03/2016
 2016/078241	Referral to AUSGRID - SEPP - Infrastructure 2007	14/03/2016
 2016/083781	SEA Map Notification	17/03/2016
 2016/083807	Notification Letter - 12 posted 17/03/2016	17/03/2016
 2016/104043	Submission - Pickworth	04/04/2016
 2016/124844	Landscape Referral Response	20/04/2016