

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2016/0001
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Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 9 DP 30549, 11 Meehan Road CROMER NSW 2099
Proposed Development:	Modification of Consent No. MOD2016/0001 granted for Alterations and additions to a dwelling house
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:	Simon Philip Healey Yvette Pearl Walden-Healey
Applicant:	Simon Philip Healey Yvette Pearl Walden-Healey

Application lodged:	04/01/2016
Application Type:	Local
State Reporting Category:	Residential - Alterations and additions
Notified:	25/01/2016 to 08/02/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	2
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 9 DP 30549 , 11 Meehan Road CROMER NSW 2099
Detailed Site Description:	The subject site consists of a single allotment located on the southern side of Meehan Road. The site is regular in shape with a frontage of 15.2m along Meehan Road and a depth of 36.5m. The site has a surveyed area of 557.4m². The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling house. A carport is located along the eastern boundary of the site with a cabana and shed located at the rear of the site. Surrounding development consists of predominantly one to two storey detached dwelling houses which vary in architectural style. The site has a northerly fall (9.2% slope) over the existing building area resulting in a change in height of 2m. The site maintains vegetative screening along the northern and southern boundaries and a portion of the eastern western boundaries. The vegetation on site includes a mix of grasses, small to medium shrubs, hedging and a number of mature trees located in the rear yard. There are no threatened species identified on site.

Map:



this application can be approved.

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 DA2014/1343 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 DA2014/1343.
(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	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.

Section 96(1A) - Other Modifications	Comments
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.	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>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <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.

Section 79C 'Matters for Consideration'	Comments
	Clauses 93 and/or 94 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. Clause 98 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. Clause 98 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. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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 (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 2 submission/s from:

Name:	Address:
Mr Tony Paul	9 Meehan Road CROMER NSW 2099
David Robert Page	13 Meehan Road CROMER NSW 2099

The matters raised within the submissions are addressed as follows:

- **I object to the increase in size to the window on the Eastern side - which has already been done, without our approval. It is higher and wider than on original plans submitted. We have concerns regarding our privacy in our back yard, as I have 3 daughters who sun bake there during the year.**

Comment:

There is no change to the window on the eastern facade as approved under DA2014/1343. This window is identified in the same location and is the same size as the window approved with the original development application. The only changes subject of assessment under this application are:

- Reduction in size of windows 5 and 6 which adjoin the first floor bathroom and ensuite to provide a minimum sill height of 2.0m.
- New highlight window on the western facade adjoining the ground floor living/dining room. This window to have a 1.85m sill height.
- Removal of the external access door from the carport into the stairs on the eastern facade.
- Minor internal reconfiguration to relocate the laundry and change that space into an internally accessed wardrobe.
- Create new internal laundry outside the existing ground floor bathroom.

Accordingly, these concerns hold no determining weight.

- **Once again, these owners are thumbing their nose at the council - specifically - and neighbours by making changes and asking for approval only after they have completed the work. We strongly oppose the modifications.**

Comment

In accordance with case law made in the NSW Land and Environment Court in relation to Windy Dropdown v Warringah Council, an applicant may retrospectively modify a development consent pursuant to S96 of the Environmental Planning and Assessment Act. This matter does not hold determining weight.

- **The windows in No.11 Meehan Road have been installed for months and we would have liked to have seen the window on the western side on the original plan, as there wasn't one. We have no objection to the window, but would like it to be opaque glass as it looks straight out to our front veranda.**

Comment:

The new window identified on the western facade has a sill height of 1.85m which ensures no unreasonable overlooking can result. Accordingly, this window does not allow for direct overlooking. This issue does not warrant amendment of the plans and does not hold determining weight.

MEDIATION

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

REFERRALS

No referrals were sent in relation to this application

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 application (see Certificate No.A238322 dated 13 March 2016). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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
Height of Buildings:	8.5m	8.5m	8.5m	Nil	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	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	6.3m	No change	Yes
B3 Side Boundary Envelope	4m (eastern)	Within envelope	No change	Yes
	4m (western)	0.56m	No change	Yes
B5 Side Boundary Setbacks	0.9m (east)	3.6m	No change	Yes
	0.9m (west)	1.89m	No change	Yes
B7 Front Boundary Setbacks	6.5m	Unchanged	No change	Yes
B9 Rear Boundary Setbacks	6m	Unchanged	No change	Yes
D1 Landscaped Open Space and Bushland Setting	40%	31.2% (174.2m ²)	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
R2 - All other land in R2 Zone	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
All other land under 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
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

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. Mod2016/0001 for Modification of

Consent No. MOD2016/0001 granted for Alterations and additions to a dwelling house on land at Lot 9 DP 30549,11 Meehan Road, CROMER, subject to the conditions printed below:

A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Elevations - Issue B	15/12/2015	Barrie EPPS Design and Construction Services
Level 1 Plan - Issue C	15/12/2015	Barrie EPPS Design and Construction Services
Level 2 Plan - Issue B	15/12/2015	Barrie EPPS Design and Construction Services

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)

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

Renee Ezzy, Senior Development Planner

The application is determined under the delegated authority of:

Rodney Piggott, Development Assessment Manager

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 MOD2016/0001	11 Meehan Road CROMER NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	05/01/2016
 2016/001506	DA Acknowledgement Letter - Yvette Pearl Walden-Healey - Simon Philip Healey	05/01/2016
 2016/005450	Modification Application Form	08/01/2016
 2016/005453	Applicant Details	08/01/2016
 2016/005484	Plan - Survey	08/01/2016
 2016/005491	Report - BASIX Certificate	08/01/2016
 2016/005494	Plan - External	08/01/2016
 2016/005497	Plans - Internal	08/01/2016
 2016/005501	Plans - Master Set	08/01/2016
 2016/009638	File Cover	13/01/2016
 2016/022130	Map Notification	22/01/2016
 2016/029986	Online Submission - Paul	28/01/2016
 2016/030458	Online Submission - Page	31/01/2016
 2016/067595	Additional Information Letter - Yvette Pearl Walden-Healey - Simon Philip Healey	02/03/2016