

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2015/0037
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<b>Responsible Officer:</b>	Daniel Milliken
<b>Land to be developed (Address):</b>	Lot 561 DP 1041903 , 56 Cowan Drive COTTAGE POINT NSW 2084
<b>Proposed Development:</b>	Modification of Development Consent DA2014/0994 granted for Alterations and additions to existing studio ancillary to dwelling house
<b>Zoning:</b>	LEP - Land zoned E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Warringham Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Peter Elias Georges
<b>Applicant:</b>	Martin Bednarczyk

<b>Application lodged:</b>	05/03/2015
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	14/04/2015 to 29/04/2015
<b>Advertised:</b>	Not Advertised in accordance with A.7 of WDCP
<b>Submissions:</b>	0
<b>Recommendation:</b>	Approval

### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979,

and the associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringham Development Control Plan - B5 Side Boundary Setbacks

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 561 DP 1041903 , 56 Cowan Drive COTTAGE POINT NSW 2084
<b>Detailed Site Description:</b>	<p>The site is located in Cottage Point on the western side of Cowan Drive and adjacent to the foreshore.</p> <p>The site has an area of 876sqm and slopes very steeply down towards the west. Existing on the site is a three storey dwelling that steps down the top of the steep site and an attached carport. The site also contains a two storey outbuilding, an open paved area and a boatshed all located close to the foreshore. A jetty protrudes over and into the water.</p> <p>The surrounding development consists of detached residential dwellings to the north in the E4 Environmental Living zone and an E1 National Parks and Nature Reserves zone to the south and east.</p>

Map:



**SITE HISTORY**

DA2003/1527 for an open pavilion structure plus rebuilt BBQ & boatshed to replace the existing fibre cement buildings was approved via deferred commencement on 5 October 2005. The consent became operational on 29 May 2006.

DA2014/0994 for alterations and additions to existing studio ancillary to dwelling house was approved on 11/12/2014.

**PROPOSED DEVELOPMENT IN DETAIL**

The modifications include:

- Alterations and additions to the approved two storey building on the water front comprising an enlarged BBQ area and the extension of the upper balcony towards the eastern boundary.

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 DA2014/0994, 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	<b>Yes</b> 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 DA2014/0994.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

## Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an 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)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application/This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;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.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent/This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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/This clause is not relevant to this</p>

Section 79C 'Matters for Consideration'	Comments
	<p>application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent/This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent/This clause is not relevant to this application.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(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 / will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will / 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 un/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 of the application Council received no submissions.

**MEDIATION**

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

**REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>
Natural Environment (Biodiversity)	Councils Natural Environment - Bushland and Biodiversity section raise no objection to the proposal.

<b>External Referral Body</b>	<b>Comments</b>
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.

**Warrarah 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	Complies
Height of Buildings:	8.5m	7.65m	7.65m	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

**Warrarah Development Control Plan**

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	6.12m	6.12m	Yes
B3 Side Boundary Envelope	4m	No encroachments	No encroachments	Yes
	4m	No encroachments	No encroachments	Yes
B5 Side Boundary Setbacks	0.9m	Ground floor - nil First floor - 1.35m	Ground floor - nil First floor - 1.35m	No No



B7 Front Boundary Setbacks	Merit assessment	No change	No change	Yes
B11 Foreshore Building Setback	15m	700mm (allowed under the exception rule)	700mm (allowed under the exception rule)	Yes
D1 Landscaped Open Space and Bushland Setting	40%	44.98% (394sqm)	44.98% (394sqm)	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
E4 Side Boundary Envelope Exceptions	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
Side Setbacks - E4	No	Yes
Side Setback Exceptions - E4	No	Yes
B8 Merit assessment of front boundary setbacks	Yes	Yes
B11 Foreshore Building Setback	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
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

**B5 Side Boundary Setbacks**

Description of non-compliance

A 1.35m long section of the storeroom will have a nil setback to the side boundary. The setback of the BBQ area and a new column supporting the upper balcony then increases to 250mm.

The upper balcony is set back between (existing) nil and 400mm.

The upper floor maintains the previously approved 1.35m side setback.

The control requires a minimum side setback of 900mm.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*

Comment:

The site will retain 44.98% (394sqm) of landscaped open space which will provide adequate opportunities for deep soil planting.

- *To ensure that development does not become visually dominant.*

Comment:

The element of the proposal that encroaches into the 900mm side setback is single storey and partly cut into the slope of the land. The development will not become visually dominant.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The element of the proposal that encroaches into the 900mm side setback is single storey and partly cut into the land. The structure is also well within the 8.5m height limit thereby minimising the scale and bulk of the building.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposal will not result in any unreasonable privacy, amenity or solar access impacts on the neighbouring buildings.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The development will result in a reasonable sharing of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **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. Mod2015/0037 for Modification of Development Consent DA2014/0994 granted for Alterations and additions to existing studio ancillary to dwelling house on land at Lot 561 DP 1041903,56 Cowan Drive, COTTAGE POINT, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA03 Revision B	27.02.2015	Archi Spectrum

DA04 Revision B	27.02.2015	Archi Spectrum
DA05 Revision B	27.02.2015	Archi Spectrum
DA06 Revision B	27.02.2015	Archi Spectrum
DA07 Revision B	27.02.2015	Archi Spectrum

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

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

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

**Signed**

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**Daniel Milliken, Planner**

The application is determined under the delegated authority of:

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**Steven Findlay, Development Assessment Manager**




















**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

<b>Notification Document</b>	<b>Title</b>	<b>Date</b>
 2015/103781	notification map	13/04/2015

## ATTACHMENT C

Reference Number	Document	Date
 2015/064312	Report Statement of Environmental Effects from CD	03/03/2015
 2015/064325	Plans - Master Set from CD	04/03/2015
 2015/064307	Plans - Notification from CD	04/03/2015
 MOD2015/0037	56 Cowan Drive COTTAGE POINT NSW 2084 - Section 96 Modifications - Section 96 (2) Environmental Impact	05/03/2015
 2015/063280	DA Acknowledgement Letter - Martin Bednarczyk	05/03/2015
 2015/064301	Modification Application Form	06/03/2015
 2015/064303	Applicant Details	06/03/2015
 2015/064317	Plans - External	06/03/2015
 2015/064321	Plans - Internal	06/03/2015
 2015/067658	File Cover	10/03/2015
 2015/068476	Request further information	11/03/2015
 2015/078704	Additional information - MOD2015/0037 - 56 Cowan Drive Cottage Point - Archispectrum	18/03/2015
 2015/078710	Further information - DA2015/0037 - 56 Cowan Drive Cottage Point - Archispectrum	18/03/2015
 2015/084157	Natural Environment Referral Response - Biodiversity	24/03/2015
 2015/103761	notification letters - 6 sent	13/04/2015
 2015/103781	notification map	13/04/2015
 2015/104222	Referral to AUSGRID - SEPP - Infrastructure 2007	14/04/2015
 2015/104231	Referral to RFS - Local Office	14/04/2015
 2015/112865	referral - nsw rural fire - Development Application Mod2015/0037 56 Cowan Drive Cottage Point NSW 2084	21/04/2015