

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2015/0049
Responsible Officer:	Lauren Roberts
Land to be developed (Address):	Lot 16 DP 758566 , 53 Ballyshannon Road KILLARNEY HEIGHTS NSW 2087
Proposed Development:	Modification to DA2014/1056 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:	Feroze Ahmed Badyari Susan Amanda Badyari
Applicant:	Feroze Ahmed Badyari

Application lodged:	16/03/2015
Application Type:	Local
State Reporting Category:	Residential - Alterations and additions
Notified:	24/03/2015 to 08/04/2015
Advertised:	Not Advertised in accordance with A.7 of WDCP
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 16 DP 758566 , 53 Ballyshannon Road KILLARNEY HEIGHTS NSW 2087
Detailed Site Description:	The subject site consists of single allotment located on the western side of Ballyshannon Road. The site is legally known as Lot 16 in DP 758566, No. 53 Ballyshannon Road. The site is irregular in shape with a frontage of 14.3m along Ballyshannon and a depth of 38.6m. The site has a surveyed area of 702m². The site is located within the R2 Low Density Residential zone and accommodates a two storey masonry residential dwelling with a swimming pool at the rear of the site. Directly to the rear boundary is the Garigal National Park. Surrounding development consists of one to two storey detached residential dwellings set in landscaping settings. The site is rectangular in shape and the topography of the site slopes down at a moderate gradient form the front (east) to the rear (western) boundary which equates to a slope of 13.6%. The site consists of landscaping with lawn, shrubs, and a number of small and large trees.

Map:



SITE HISTORY

DA2014/1056 for alterations and additions to and existing dwelling was approved on 27 January 2015.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification to the approved development involves minor external and internal alterations to the pre-approved development (DA2014/1056). Key elements of the proposal include:

- Amend the driveway gate width;
- Retain existing external blade wall along northern elevation;
- Demolition part of supporting wall on lower ground floor;
- Amend bi-fold windows in the living room to bi-fold doors on the western elevation;
- Amend windows on southern elevation;
- Amend windows on northern elevation;
- Increase floor area to allow change to stairwell; and
- Internal alterations including amending the staircase, relocate the master bedroom, provision for a new laundry, relocate the living room and amend and relocate the kitchen.

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 DA2014/1056, 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 DA2014/1056.
(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	No submissions were received in relation to this application.

Section 96(1A) - Other Modifications	Comments
be.	

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)(iia) – 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
	<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 clause is not relevant to this application. <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. <u>Clause 143A</u> 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 Warrarah 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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	No objection to approval and no 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A197844_02 dated 05

March 2015). The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.

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.

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	7.6m to 11.4m	No Change	N/A	N/A

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height				
North	7.2m	7.5m x 9.9m	No	N/A
South	7.2m	7.8m x 9.6m	Change	N/A

			No Change	
B3 Side Boundary Envelope North South	4.0m x 45° 4.0m x 45°	8.2m x 45° 7.7m x 45°	No Change No Change	N/A N/A
B5 Side Boundary Setbacks North South	0.9m 0.9m	2.5m to 4.1m 1.3m to 1.8m	No Change No Change	N/A N/A
B7 Front Boundary Setbacks	6.5m	7.3m to 9.4m	No Change	N/A
B9 Rear Boundary Setbacks	6m	10.0m x 11.2m	No Change	N/A
D1 Landscaped Open Space and Bushland Setting	40% (280.8m²)	40.8% (287.11m²)	No Change	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
D8 Privacy	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D22 Conservation of Energy and Water	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. Mod2015/0049 for Modification to DA2014/1056 granted for alterations and additions to an existing dwelling on land at Lot 16 DP 758566,53 Ballyshannon Road, KILLARNEY 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
Demolition	06/03/2015	MICRIS Design PTY LTD
Proposed Sections	06/03/2015	MICRIS Design PTY LTD
Streetscape Elevation, Front Fence and Gate Detail and Open Space	06/03/2015	MICRIS Design PTY LTD
Site Plan/Ground Floor Plan	06/03/2015	MICRIS Design PTY LTD
First Floor Plan	06/03/2015	MICRIS Design PTY LTD
Lower Ground Floor	06/03/2015	MICRIS Design PTY LTD
North and East Elevation	06/03/2015	MICRIS Design PTY LTD
West and South Elevation	06/03/2015	MICRIS Design PTY LTD

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

Lauren Roberts, Planner

The application is determined under the delegated authority of:

Phil Lane, Development Assessment Manager

ATTACHMENT A

Notification Plan	Title	Date
 2015/078697	plans notification	06/03/2015

ATTACHMENT B

Notification Document	Title	Date
 2015/083595	Notification map	24/03/2015

ATTACHMENT C

Reference Number	Document	Date
 2015/078712	report BASIX certificate	05/03/2015
 2015/078697	plans notification	06/03/2015
 2015/078703	report statement of environmental effects	06/03/2015
 MOD2015/0049	53 Ballyshannon Road KILLARNEY HEIGHTS NSW 2087 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	16/03/2015
 2015/078672	modification application form	18/03/2015
 2015/078681	applicant details	18/03/2015
 2015/078685	plan - survey	18/03/2015
 2015/078720	plans - external	18/03/2015
 2015/078725	plans - internal	18/03/2015
 2015/078729	plans - master set	18/03/2015
 2015/079685	DA Acknowledgement Letter - Feroze Ahmed Badyari	19/03/2015
 2015/079686	File Cover	19/03/2015
 2015/079691	Referral to AUSGRID - SEPP - Infrastructure 2007	19/03/2015
 2015/083591	Notification letter 6	24/03/2015
 2015/083595	Notification map	24/03/2015
 2015/108528	Development Engineering Referral Response	17/04/2015