

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2015/0173
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 108 DP 6167 , 9 Banksia Street DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2002/0492 granted for Erection of a single 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:	Michael Ossedryver Karin Ossedryver
Applicant:	Nolan Planning Consultants

Application lodged:	06/08/2015
Application Type:	Local
State Reporting Category:	Residential - Alterations and additions
Notified:	13/08/2015 to 28/08/2015
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.

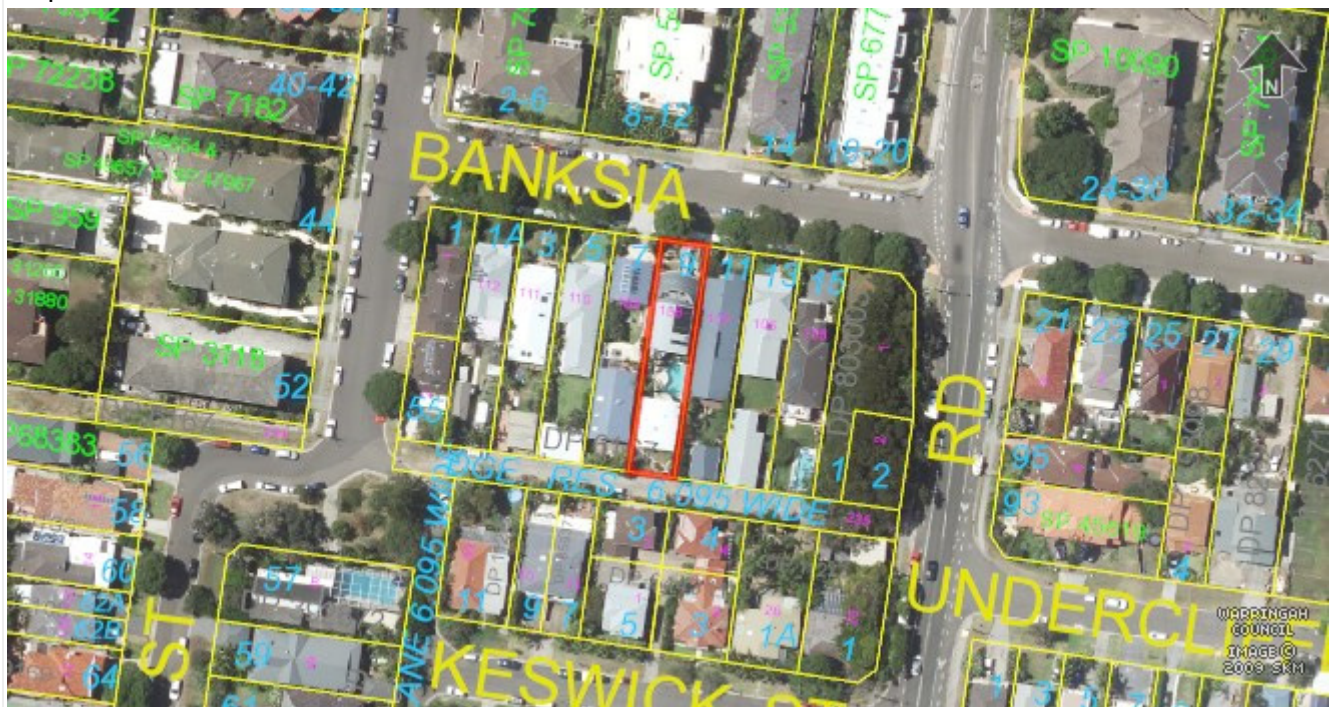
SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 108 DP 6167 , 9 Banksia Street DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Banksia Street, Dee Why.</p> <p>The site is regular in shape with a frontage of 10.06m along Banksia Street and a depth of 50.90m. The site has a surveyed area of 512.05m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three storey residential dwelling with attached garage, swimming pool and two storey pool room. The Pool room is currently the subject of a Building Certificate and Development Application to convert it into a secondary dwelling.</p> <p>Surrounding development consists of residential dwellings to the south, east and west and residential flat buildings to the north.</p> <p>The site slopes from the rear to the front boundary.</p> <p>The site has minimal landscaping and no known threatened species.</p>

Map:



SITE HISTORY

DA2002/0492 was granted on 15 November 2002 for the construction of a dwelling house and detached habitable structure. MOD2002/0492/01 was approved 15 October 2004 for a minor changes to the dwelling and a new bar area in the pool room in place of an ensuite.

The upper level of the detached structure was converted without approval into a secondary dwelling and is currently the subject of a Building Certificate - BC2015/0086. DA2015/0724 was lodged and is currently under assessment to legitimise the use of the detached outbuilding as a secondary dwelling.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA2002/0492 by deleting the gallery/walkway at the ground level from the plans which provides a link from the dwelling to the detached outbuilding.

Separate applications have been lodged with Council for the following:

- DA2015/0724 - for a change of use for the detached outbuilding to enable a secondary dwelling on the upper level,
- BC2015/0086 - for unauthorised works to the dwelling and detached outbuilding.

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 DA2002/0492, 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	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 DA2002/0492.

Section 96(1A) - Other Modifications	Comments
originally granted was modified (if at all), and	
(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)(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>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.

Section 79C 'Matters for Consideration'	Comments
	<p><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.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><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.</p> <p><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. .</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 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
Building Assessment - Fire and Disability upgrades	No objection to approval and no modified or additional conditions are recommended.
Compliance Management	<p>This property is the subject of a Building Investigations Order relating to a complaint, EPA2014/0029 that will be partly satisfied upon approval of this application</p> <p>Recommendation</p> <p>Approval</p>
Development Engineers	<p>The proposed modification does not impact upon the previously approved driveway or detention system.</p> <p>No objection to approval and no modified or additional conditions are recommended.</p>

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)

Nil

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

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Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	The proposal complies with both the maximum height measured in storeys and the maximum height measured in metres	No change to existing	Yes

The proposal seeks to amend the approved plans by deleting the gallery/walkway. There will be no change to the LEP Development Standards.

Compliance Assessment

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	N/A	5.96m	Yes
B3 Side Boundary Envelope	5m	Building is sited within the envelope and is satisfactory	No encroachment	Yes
B5 Side Boundary Setbacks	0.9m	Distance to side boundary is satisfactory	0.91m	Yes
B7 Front Boundary Setbacks	6.5m	The development maintains the minimum front setback	8.73m	Yes
B9 Rear Boundary Setbacks	6m	Proposal complies with the Rear Setback Standards	6m	Yes
D1 Landscaped Open Space and Bushland Setting	40%	The proposal breaches the Landscape Open Space Standards	26.31%	No

The proposal seeks to amend the approved plans by deleting the gallery/walkway. There will be no change to the DCP Built Form Controls

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C4 Stormwater	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D14 Site Facilities	Yes	Yes
E10 Landslip Risk	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2015/0173 for Modification of Development Consent DA2002/0492 granted for Erection of a single dwelling on land at Lot 108 DP 6167,9 Banksia Street, DEE WHY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-01 - Site Analysis Plan Garage Floor Plan	17-07-2015	Michael Airey
A-02 - Ground Floor Plan First Floor Plan Roof Plan	17-07-2015	Michael Airey
A-03 - Elevations	17-07-2015	Michael Airey

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)

B. Add Condition 46. Modification only for the deletion of the Gallery to read as follows:

Modification MOD2015/0173 is only for the deletion of the 'Gallery', shown in green on the stamped plans.

Reason: To ensure compliance with the WDCP.

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

Julie Edwards, Planner


The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager



















ATTACHMENT A

Notification Plan	Title	Date
 2015/233599	Plans Notification	10/08/2015

ATTACHMENT B

Notification Document	Title	Date
 2015/237448	Notification map	13/08/2015

ATTACHMENT C

Reference Number	Document	Date
 MOD2015/0173	9 Banksia Street DEE WHY NSW 2099 - Section 96 Modifications - Section 96 (AA) Court Consent	06/08/2015
 2015/230703	DA Acknowledgement Letter - Nolan Planning Consultants	06/08/2015
 2015/233594	Modification Application Form	10/08/2015
 2015/233595	Applicant Details	10/08/2015
 2015/233598	Report & Plan Survey	10/08/2015
 2015/233599	Plans Notification	10/08/2015
 2015/233603	Report Statement of Environmental Effects	10/08/2015
 2015/233969	Plans External Layout	11/08/2015
 2015/233975	Plans Master Set	11/08/2015
 2015/239074	Compliance Management - Assessment Referral - Mod2015/0173 - 9 Banksia Street DEE WHY NSW 2099	11/08/2015
 2015/236480	Building Assessment Referral - Mod2015/0173 - 9 Banksia Street DEE WHY NSW 2099 - MM	11/08/2015
 2015/235950	File Cover	12/08/2015
 2015/235970	Referral to AUSGRID - SEPP - Infrastructure 2007	12/08/2015
 2015/237445	Notification letter 39	13/08/2015
 2015/237448	Notification map	13/08/2015
 2015/241771	Building Assessment Referral Response	18/08/2015
 2015/242205	Compliance Management Referral Response	19/08/2015
 2015/249026	Development Engineering Referral Response	24/08/2015