

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0264
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 6 DP 13900, 139 Headland Road NORTH CURL CURL NSW 2099
Proposed Development:	Modification of Development Consent DA2019/1369 granted for Demolition works and the construction of a dwelling house and swimming pool.
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Matthew David Lewis Karina Jane Lewis
Applicant:	Karina Jane Lewis

Application Lodged:	18/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	26/05/2023 to 09/06/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks to amend development consent DA2019/1369 under S4.55(2), which granted approval for demolition works and the construction of a dwelling house and swimming pool.

Specifically, the modification application proposes the following:

External

- Remove tree adjacent to the western side boundary.

- Provide new tree in rear southwest corner of the site.
- New bin storage area adjacent to the driveway towards the western boundary.
- Amend front fence.
- Alteration to approved roof form, to increase by 0.2m in the centre of the dwelling and reduce by 1.6m at the front of the dwelling.

Upper Level

- Realign western wall of garage and provide a setback of 1.5m to the side boundary.
- Realign the eastern wall of lounge room (over lower roof form).
- Internal alterations to relocate WC and provide garage storage.
- Increase the setback of the upper eave over the garage to 5.9m, from the approved 5.5m.

Mid Level

- Addition to front northeast corner. Setback of 6.5m to street frontage of dwelling facade maintained.
- Widen hallway by enclosing a portion of the covered outdoor area.
- Changes to the internal floor plan.

Lower Level

- Realign western wall and maintain 2.03m setback to the western boundary.
- Additional floor area to the rear southwest corner.

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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B7 Front Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 6 DP 13900 , 139 Headland Road NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Headland Road.</p> <p>The site is regular in shape with a width of 14.3m and a depth of 39.6m. The site has a surveyed area of 567m².</p> <p>The site is located within the R2 Low Density Residential zone and is currently vacant, with preliminary construction commenced (excavation and footings) on a approved dwelling house and swimming pool..</p> <p>The land has a southerly aspect with a moderate slope falling down from the front boundary to the rear.</p> <p>There is no significant vegetation on the site.</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA2019/1369: Development consent granted for demolition works and the construction of a dwelling house and swimming pool was approved by Council on 29 April 2020, subject to deferred commencement for acquisition of a drainage easement, for the overflow of the approved OSD system. This consent is the subject of the proposed modification.

MOD2021/0831: Application made under Section 4.55(1A) to modify consent DA2019/1369, specifically to delete the Deferred Commencement condition of consent that required the creation of a drainage easement through the adjoining downstream properties on Parr Parade. The modification also involved a revised stormwater management system, with a dispersal system to offset the loss of the easement. This application was approved on 16 December 2021.

2021020/1: Construction certificate issued by Ridge Building Certifiers for the "Stage 1" of the approval, specifically demolition of the existing house and preliminary excavation, on 7 February 2023.

MOD2023/0012: Application made under Section 4.55(1A) to modify consent DA2019/1369. The modification sought to amend various stormwater and OSD measures. The application was approved on 13 April 2023.

2021020/2: Construction certificate issued by Ridge Building Certifiers for the "Stage 2" of the approval, specifically for construction of a dwelling house and swimming pool, on 15 May 2023.

In regard to the construction already undertaken on the site, the proposed modification relates to no part of these works that have already been undertaken.

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 DA2019/1369, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/1369 for the following reasons:</p> <ul style="list-style-type: none"> the basic dimensions of the approved dwelling, in regard to: setbacks, floor heights, private open space area, window heights and landscaped open space have remained overwhelmingly the same; and the aspects of the proposal that are different: ie. the amended roof profile, front facade and front setback are in their overall dimensions not of a magnitude that could be reasonably considered to be substantially different to that already approved. The modifications to the proposed dwelling are considered to be design refinements, rather than material changes which alter the essence of the approved development.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/1369 did not require concurrence from the relevant Minister, public authority or approval body.
(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	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
development control plan under section 72 that 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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of the original consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 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.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of the original consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (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	<p>(i) Environmental Impact 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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/05/2023 to 09/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification includes an application to remove a tree located on the western side of the approved dwelling. The tree will be within 2m of the building, which would make it exempt under WDCP E1.</p> <p>Existing conditions require planting of 2 trees on the site, which is considered adequate. No additional conditions are required regarding landscape issues.</p> <p>No objections are raised to the proposed modification.</p>
NECC (Development Engineering)	The proposed amendments have no bearing on the existing engineering conditions. No additional engineering conditions proposed. Engineering conditions in Notice of Determination to remain unchanged.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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. 1026886S_07 dated 20 April 2023).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental 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	8.2m	8.4m	N/A	Yes

Compliance Assessment

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	7.4m	7.6m	No
B3 Side Boundary Envelope	5m (east)	No breach	No breach	Yes
	5m (west)	No breach	No breach	Yes
B5 Side Boundary Setbacks	0.9m (east)	0.9 - 6m	No change	Yes
	0.9m (west)	0.9 - 2m	No change	Yes
B7 Front Boundary Setbacks	6.5m	5.5m	5.9m	No
B9 Rear Boundary Setbacks	6m	10.7m (lower level)	No change	Yes
D1 Landscaped Open Space and Bushland Setting	40%	258m ² or 46%	No change	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed wall height on the west elevation is proposed at 7.6m, which is 0.2m above the approved 7.4m.

This represents a 5% variation with maximum 7.2m wall height control.

Merit consideration:

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

- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment: The extent of the increase in the proposed modification is relatively minor and will not represent a development that will have an adverse visual impact, when viewed from either the public domain, or from adjoining private land / residences.

- *To ensure development is generally beneath the existing tree canopy level*

Comment: The extent of the proposed wall height breach (7.6m) is not of a magnitude that will be above the existing tree canopy.

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

Comment: There is unlikely to be any loss of views as a result of the proposed variation to the wall height control.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment: There is unlikely to be any adverse impact on the amenity of the surrounding area as a result of the proposed variation with the Wall Height control.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment: No additional excavation is proposed as part of the proposed modification (the 0.2m is a result of a minor change in the centre roof profile) and therefore this objective is achieved.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment: The proposed modification proposes sufficient variation in roof design to achieve this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

A non-compliance with the front setback by the upper eave of the garage of 5.5m was approved in the original consent. The modified proposal will increase this setback to 5.9m, bringing the approved development closer into compliance with the proposal. Hence, the objectives of the control are not compromised by the proposed modification.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 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 2021;
- 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 to Modification Application No. Mod2023/0264 for Modification of Development Consent DA2019/1369 granted for Demolition works and the construction of a dwelling house and swimming pool. on land at Lot 6 DP 13900, 139 Headland Road, NORTH CURL CURL, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-159205 - MOD2021/0831	16 December 2021	Amended stormwater management system. A. Modify the Notice of Determination "DETERMINATION - APPROVED - DEFERRED COMMENCEMENT CONSENT" details B. Delete Condition No.1 - Stormwater Drainage Easement. C. Add Condition No. 2A Modified Plans 'Modification Approved Plans and Documents' D. Modify Condition No.7 On-site Stormwater Detention Details
PAN-297075 MOD2023/0012	13 April 2023	Amended stormwater management system. A. Add Condition No.2B - Modification of Consent - Approved Plans and supporting Documentation B. Modify Condition No.7 - On-site Stormwater Detention Details

Modified conditions

A. Add Condition No.2C - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A01	1	Site Plan	Scope Architects	28 April 2023
A02	1	Upper Level Plan	Scope Architects	28 April 2023
A03	1	Mid Level Plan	Scope Architects	28 April 2023
A04	1	Lower Level Plan	Scope Architects	28 April 2023
A05	1	Elevations	Scope Architects	28 April 2023
A06	1	Elevations	Scope Architects	28 April 2023
A07	1	Elevations	Scope Architects	28 April 2023
A08	1	Long Section	Scope Architects	28 April 2023
A09	1	Driveway Section	Scope Architects	28 April 2023

Approved Reports and Documentation			
Document Title / Number	Version Number	Prepared By	Date of Document

BASIX Certificate 1026886S_07	-	Efficient Living Pty Ltd	20 April 2023
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Nick England, Planner

The application is determined on 21/08/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments