

8 May 2023

Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir/Madam,

SECTION 4.55(2) APPLICATION

Premises:	Lot 6 in DP 13900, No. 139 Headland Road, North Curl Curl
Amendments:	Amend Plans
Development Application:	DA2019/1369
Date of Determination:	29/04/2020 (as modified)

INTRODUCTION

On behalf of the Mr & Mrs Lewis I seek Council consent pursuant to Section 4.55(2) of the *Environmental Planning & Assessment Act* 1979 to amend Development Consent DA2019/1369 relating to the construction of a new dwelling house and swimming pool.

BACKGROUND

Development Consent was granted for the construction of a new dwelling and swimming pool. The consent was issued as a Deferred Commencement on 29 April 2020. A modification was approved on 16/12/2021 which deleted the Deferred Commencement condition and the consent is now operational.

This Section 4.55(2) application carries out a detailed assessment against the relevant provisions of the Warringah LEP and DCP. It is considered that the proposed amendment is consistent with the relevant planning controls and is worthy of the approval.

PROPOSED MODIFICATION

This application seeks to modify the Development Consent by amending the approved plans. The proposed modifications are depicted in the architectural plans prepared by Scope Architects, Issue 1 and dated 28/04/2023 and as summarised below:

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.

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.

Mid Level

- Addition to front northeast corner. Setback of 6.5m to street frontage 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.

The proposal results in the following:

Site area: 567.6m²
Height: 8.25m
Landscaped Area: 226.9m² or 40%

LEGISLATION

Section 4.55(2) of the Act states:

(2) Other Modifications

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*

Comment: The original consent granted approval for the construction of a new dwelling with swimming pool and ancillary works. This application seeks to amend the approved plans to provide a modified roof form and changes to the floor plan. The proposal is substantially the same development.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) 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*
- (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 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: The proposed modification will be notified in accordance with Council's policy and any submissions will be considered by Council.

LEGISLATION

Warringah Local Environmental Plan 2011

The subject site is zoned R2 Low Density Residential under the provisions of the Warringah Local Environmental Plan 2011.

The proposed dwelling is consistent with the objectives of the R2 zone and is permissible with consent.

The proposed amendments alter the approved roof form, with a maximum height of 8.29m which complies with Clause 4.3 of the Warringah LEP.

There are no provisions relevant to the proposed modifications.

Warringah Development Control Plan

The relevant provisions of the DCP are detailed below:

Clause	Requirement	Compliance
B1 – Wall heights	7.2m	Approved wall height not altered.
B3 - Side Boundary Envelope	Building envelope 45 degrees from 5m. Eaves up to 675mm are an allowable encroachment	No Change Eaves are an allowable encroachment.
B5 - Side Boundary setbacks	Minimum: 0.9m	Yes Setbacks of at least 0.9m provided.
B7 – Front Boundary Setbacks	Minimum 6.5m	Yes The proposal amendments maintain a setback of 6.5m to the front boundary.
B9- Rear Boundary Setbacks& B10 Merit Assessment of Rear Setbacks	6m rear setback required The rear boundary setback may be encroached by swimming pools and outbuildings which, in total, do not exceed 50% of the rear setback area	Yes The proposed modifications are setback greater than 6m to the rear boundary.
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	Yes Proposed amendments provides for a landscaped area of 40% of the site.
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and ventilation/natural cooling Compliance with SEPP (BASIX) requirements	Yes An amended BASIX certificate has been issued and forms part of the submission to Council.

Clause	Requirement	Compliance
D6 – Access to sunlight	The controls require that sunlight to at least 50% of the private open space of both the subject and adjoining properties' private open space receives not less than three hours sunlight between 9am – 3pm on 21 June winter solstice.	Yes The proposed modifications do not result in any significant overshadowing.
D7 - Views	View sharing to be maintained	Yes The proposal maintains the rear setbacks and does not extend above the approved maximum building height. The proposal maintains appropriate view sharing including oblique views.
D8 - Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties.	Yes The proposed amendments have been designed to maintain an appropriate level of privacy is maintained to the adjoining properties. The proposal generally maintains room locations and does not provide any new windows that will reduce privacy to the adjoining properties.
D9 – Building Bulk	This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby properties & not to visually dominate the street.	Yes The proposed amendments reduce bulk and scale through a less complicated roof form and reduction in approved height. The proposal continues to present as a single level dwelling when viewed from the street.

Clause	Requirement	Compliance
D10 – Building Colours and materials	External finishes and colours sympathetic to the natural and built environment	Yes External finishes selected to be compatible with the existing surrounding development and the natural environment.
D11 - Roofs	The LEP requires that roofs should not dominate the local skyline.	Yes The proposal provides for a less complicated roof form which minimises bulk and scale and is compatible with the existing surrounding development.
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimized.	Yes The proposal will not result in unreasonable glare or reflection.
D13 - Front Fences and Front Walls	Front fences to be generally to a maximum of 1200mm, of an open style to complement the streetscape and not to encroach onto street.	Minor alteration to the fence which complies with this clause.
D14 – Site Facilities	Garbage storage areas and mailboxes to have minimal visual impact to the street Landscaping to be provided to reduce the view of the site facilities.	Yes New facilities will be provided on site and integrated into the front fence. The structure is not dominate in the streetscape.
D20 – Safety and Security	Buildings to enhance the security of the community. Buildings are to provide for casual surveillance of the street.	Yes The dwelling will continue to provide a good outlook of the driveway and site approach.
D22 – Conservation of Energy and Water	A BASIX Certificate is required.	Yes Amended BASIX Certificate provided.

Clause	Requirement	Compliance
E10 – Landslip Risk	Identified on map as part B	Yes The recommendations of the Preliminary Geotechnical Report previously submitted will be implemented.

JUSTIFICATION

The proposed amendments to the plans are considered to be justified for the following reasons:

- The original Consent granted approval for the construction of a new dwelling and swimming pool. This modification proposes some alterations and amendments which are considered to be substantially the same development.
- There is no detrimental impact on the public domain, adjoining properties or the streetscape.

CONCLUSION

For the reasons stated above it is considered that this application to amend the Consent should be supported. Should you require any further information please do not hesitate to contact me.

Yours faithfully,



Natalie Nolan