

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0042
----------------------------	--------------

Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 16 DP 14366, 26 Seaview Avenue CURL CURL NSW 2096
Proposed Development:	Modification of Development Consent DA2019/1238 granted for alterations and additions to a dwelling house including a 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:	Robert Anthony Bempasciuto Annette Valeur Fausboll
Applicant:	Robbie Bempascutio

Application Lodged:	01/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/03/2021 to 23/03/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification application proposes the following works:

Lower Ground Floor

- Use of Store/workshop to be combined retreat and gymnasium
- Add external steps access to garden store
- Relocate window 1 (to bathroom) from north to east wall
- Relocate window 2 (garden store) to centre of wall
- Relocate water tank to west

Ground Floor

- Increased setback of new garage to southern boundary from 938mm to 1123mm (due to survey error)
- Reduced setback to northern elevation (due to survey error)
- Addition of W11 in southern wall of garage
- Revised garage door

- Remove small deck outside games room

- Extend paving to pool under first floor overhang
- Addition of privacy screen on northern side of front entry

First Floor

- Increase balcony on front elevation with enhanced privacy screening and solid southern wall
- Setbacks altered according to survey error
- Amended layout for kitchen/ dining area
- Northern and eastern balconies to be tiled
- Balustrade for northern and eastern balconies to be clear glazing.

Pool

- Revisions to pool steps
- Reduction in pool length from 6m to 5.92m
- Increase pool decking RL from RL40.9 to RL41.15 to match floor level
- Add pool window
- Revised pool fencing compliant with Standards
- Modify the rear yard to RL40.25 on southern side of pool
- Provide retaining wall at eastern end of pool to create level planting area

External

- Revised design to rear balconies to remove the support pillar

- 2 new skylights to the kitchen

- Revision to numerous windows/ doors as detailed on plans

- Small variation to roof RL to allow for box gutters

Correction of survey errors

- Existing building setback to north corrected from 1055m to 768-771mm
- Existing building setback to south corrected from 938mm to 1133mm

Landscape

- Revision to landscape plan to retain existing rock in frontage
- Addition of 4-Cupressus sempervirens 'Glauca' adjacent driveway
- Delete Bankia spinulosa
- Replace Bambusa textilis 'Gracilis' with Magnolia 'Teddy bears'
- Replace Viburnum odoratissimum with Archontophoenix cunninghamiana
- Replace 1-Eucalyptus robusta with Natuve tree (see plans)

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 - B3 Side Boundary Envelope

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 16 DP 14366 , 26 Seaview Avenue CURL CURL NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Seaview Avenue, at its intersection with Gardere Avenue in Curl Curl. The site is legally described as Lot 16 DP 14366.</p> <p>The site is irregular in shape with dimensions of 36.575 metres (north), 40.235 metres (south), 12.88 metres (east)</p>

and a splayed west boundary to Seaview Avenue of 505.8m², 9.245 metres and 5.17 metres. The lot has an area of

The site is located within the R2 Low Density Residential zone from WLEP 2011 or locality from WLEP 2000 if relevant> zone and accommodates a two and three storey dwelling house

The site has a cross fall which descends from the middle of the site to the northern boundary by approximately 2.4m.

The site contains a landscaped backyard with some shrub planting along the northern and southern boundaries.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached residential dwellings in all directions, many of which have been designed to maximise the outlook to South Curl Curl Beach, located approximately 240 metres to the east. The site is also in close proximity to Harbord Public school to the west and Freshwater Village shopping district to the south.

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:

DA2019/1238 - Alterations and additions to a dwelling house including a swimming pool. Approved 1

June 2020.

MOD2020/0257 - Modification of Development Consent consent DA2019/1238 granted for alterations and additions to a dwelling house including a swimming pool.

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 DA2019/1238, 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
<p>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:</p>	
<p>(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>	<p>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 DA2019/1238 for the following reasons:</p> <ul style="list-style-type: none"> • The modification proposes additional planting, privacy screening and the reconfiguration and relocation of windows which will improve the levels of privacy for both the subject dwelling and the neighbouring properties. • The bulk and scale of the development is generally retained with any changes to the building envelope resulting in a discernible impact when viewed from adjoining and nearby properties and when viewed from a public space. • The amenity of the adjoining properties is not compromised with views and

Section 4.55 (2) - Other Modifications	Comments
	<p>privacy as previously approved being generally maintained.</p> <ul style="list-style-type: none"> Solar access is retained and remains compliant as originally approved
(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 DA2019/1238 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 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 Environmental 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.	See discussion on “Notification & Submissions Received” in this report.

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 96 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) –	See discussion on “Environmental Planning Instruments” in this

Section 4.15 'Matters for Consideration'	Comments
Provisions of any environmental planning instrument	report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><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.</p> <p><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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to comments received by Council's Landscape Officer. This information was received on 10 May 2021 and is supported by Council.</p> <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 clause is not relevant to this application.</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 4.15 'Matters for Consideration'	Comments
	<p><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.</p>
<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>	<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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

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 09/03/2021 to 23/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 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	This modification is for the minor alterations and additions to a previously approved Development Application. Alterations and additions as part of this modification include an increase to the paved

Internal Referral Body	Comments
	<p>area between the proposed pool and dwelling, changes to proposed landscaping, a new retaining wall along the northern boundary at the rear of the property, as well as minor increases to balcony areas with new clear glazed balustrades.</p> <p>Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls:</p> <ul style="list-style-type: none"> • B5 Side Boundary Setbacks • C7 Excavation and Landfill • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation <p>An amended Landscape Plan is provided with the modification and proposed works include the in-ground planting of trees, shrubs, grasses and groundcovers.</p> <p><u>Original Comments - 11/03/2021</u></p> <p>Concern is raised particularly in relation to the proposed new retaining wall located at the rear of the property, adjacent to the northern boundary surrounding the proposed pool. A requirement of condition B5 is to ensure "side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences". In addition, a key objective of control C7 is to "ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment on adjoining and adjacent properties". The proposed retaining wall would likely impact the neighbouring property, and therefore should not be supported as it is in contradiction to both control B5 and C7.</p> <p>It is also noted that there are two existing trees within the adjoining property to the north. The proposed retaining wall is likely to cause disturbance to the existing ground level and soil within the Tree Protection Zones, and possibly within the Structural Root Zones, of these existing trees. Concern is raised regarding the effects of the proposed works, and the impacts on the future health of these trees. As these trees are within the adjacent property, they are required to be protected.</p> <p>Concern is also raised regarding some of the plant and tree species proposed for the site. The use of <i>Archontophoenix cunninghamiana</i> and <i>Cupressus sempervirens 'Glauca'</i> would not be supported as both of these species are exempt species, and shall be substituted for locally native alternatives instead. The use of native species for these trees is important to "enhance indigenous vegetation", which is an objective of control D1. In addition, there appears to be significantly less proposed planting within the front yard of the property as compared to the original approved application. This planting provided valuable screening to mitigate the height, bulk and scale of the proposed building. Concern is therefore raised regarding</p>

Internal Referral Body	Comments
	<p>the removal of this vegetation as there is no longer sufficient screening and built form mitigation, which is a key objective of D1.</p> <p>In its current form, Council's Landscape Referral section does not support the modification on the basis that the proposed retaining wall does not satisfy conditions B5 and C7, and that it is likely to cause impacts on existing trees within the adjacent property. The concerns raised regarding proposed tree species and the removal of shrub planting at the front of the property could be adequately addressed through new conditions to ensure an ideal landscape outcome is achieved. It is therefore recommended that an amended Architectural Plan be provided indicating the removal of this retaining wall.</p> <p>Updated Comments - 24/05/2021</p> <p>Following original concerns regarding the proposed retaining wall located on the northern boundary, amended Architectural and Landscape Plans have been provided that indicate this wall has since been removed.</p> <p>The removal of this retaining wall results in a pool design that is similar to the size and location that was previously approved. For this reason, no concerns are raised with the pool design.</p> <p>An amended Landscape Plans is provided which indicates a differing planting approach to that previously proposed. The amended Landscape Plan provides a greater variety in plant types and scale, including a variety of grasses, low shrubs, high shrubs as well as trees. This planting scheme provides additional built form mitigation, as well as privacy between the site and its surrounding neighbours. The completion of these landscape works is vital to satisfy control D1, as key objectives of this control include "to enable planting to maintain and enhance the streetscape", "to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building", as well as "to enhance privacy between buildings".</p> <p>The landscape component of the proposal is therefore supported subject to the completion of landscape works as proposed on the amended Landscape Plan, as well as the enforcement of conditions as part of the previously approved development application. These conditions include tree protection, as well as the protection of rocks and sites of significance.</p>
NECC (Development Engineering)	No objections to the modification , no additional conditions required.

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 commercial 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 commercial land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 995326S_04, 11 January 2021).

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 not referred to Ausgrid. Therefore no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The development is predominantly of a low impact nature, being mostly internal alterations and additions. The proposed landscaping is also of a minor scale and will not result in any adverse impacts to the matters contained under Clause (1)(a) to (g) inclusive.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Appropriate conditions were imposed in the original consent (DA2019/1238) which require the installation and maintenance of sediment and erosion control in accordance with Landcom's 'Managing Urban Stormwater, Soils and Construction' to ensure not no sediment or polluted water enters the Lagoon. This satisfies the requirements of Clause (2)(a).¹⁴

14 Development on land within the coastal use area

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to

- foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The site is located within the coastal use area. The overall assessment of this proposal has found that the development would not unreasonably exacerbate those elements of the built form and amenity which relate to the matters listed under Clause 14(1)(a)(i) to (iii) inclusive.

The site is not subject to the matters referred to in Clause 14(1)(iv) and (v).

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The site is located within a well established residential area and is separated from the lagoon at a distance of approximately 447m. The works proposed are of a predominantly low impact nature with the only external works are of a comparatively minor scale and will not result in any adverse impact.

The development is therefore not considered to increase the risk of coastal hazards.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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	8.63m	8.63m	1.5% (No change to	No (As

approved)

approved)

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	Variation	Complies
B1 Wall height	7.2m	N: 5.4m - 8.3m S: 5.9m - 6.5m	No change No change	15.2% N/A	No (o change) Yes
B3 Side Boundary Envelope	N: 5m	5.4m x 45 degrees (8%)	5.68m x 45 degrees	13.7%	No
	S: 5m	eaves only	No change	N/A	Yes
B5 Side Boundary Setbacks	N: 0.9m	Lwr Ground: 1.1m to 3.1m Ground: 1.1m to 3.1m Upper: 1.1m to 3.1m	Lwr Ground: 768mm to 3.1m Ground: 1.1m to 3.1m (No change) Upper: 1.1m to 3.1m (No change)	14.7% N/A N/A	No (existing) Yes Yes
	S: 0.9m	Lwr Ground: 6.9m Ground: 0.9m to 1.8m Upper: 0.9m to 4.3m	No Change	N/A N/A N/A	Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	Lwr Ground: 13.3m Ground: 7.4m to 13.3m Upper: 7.4m to 19.4m	No Change	N/A	Yes
B9 Rear Boundary Setbacks	6m	Lwr Ground: 9.9m Ground: 9.9m Upper: 6.3m to 9.9m	Lwr Ground: 9.9m (No change) 6.3m (paved area) Upper: 6.3m to 9.9m (No change)	N/A N/A N/A	Yes Yes Yes
D1 Landscaped Open Space and Bushland Setting	40% (202.28m ²)	36.4% (184.8m ²)	33.4% (169.1m ²)	16.4%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	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
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	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
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The modification application does not alter the approved building height of 8.2m. No further assessment is required.

B3 Side Boundary Envelope

The proposal will continue to exceed the building envelope along the northern elevation. The corrected survey results in a reduced side setback of to the northern boundary at the lower ground level (existing

structure), and at the ground and first floor levels approved under DA2019/1238. Whilst the corrected survey does result in a further non-compliant building envelope (13.7% variation) along the northern side boundary, it is concluded that the proposal does not provide for any additional bulk that would warrant refusal. The assessment from DA2019/1238 remains applicable to this application. The works are supported on merit.

B5 Side Boundary Setbacks

DA2019/1238 approved the following setbacks to the northern side boundary:

- Lower Ground Floor - 1055mm (existing structure)
- Ground Floor - 1150mm
- First Floor - 945mm - 3150mm

The modification proposes to correct an error on the existing survey will result in the following setbacks to the northern side boundary:

- Lower Ground Floor (existing structure) - 768 - 771mm
- Ground Floor - 900mm
- First Floor - 904mm - 2880mm

Part B5 of the WDCP requires a 0.9m side setback to structures. Whilst the corrected survey provides a non-compliant setback (14.7% variation) to the northern boundary at the lower ground floor level, this is an existing situation which will be maintained as a result of the modified works. The ground floor and first floor will maintain compliance with the minimum 900mm setback control. The existing non-compliant side setback will not result in any additional bulk to the overall dwelling as the proposed design provides generous side setbacks and a well articulated form along the northern facade.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The development will maintain 33.4% (reduced from 36.4%) landscaped open space, due to the extension of the paved area at ground floor level between the dwelling and the swimming pool.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

Concern was raised with the plans submitted with the modification application as the level of planting had been reduced along the front boundary which was to provide screening and also mitigate the bulk and scale of the dwelling to the street. An amended landscape plan was proposed which provides a greater variety in plant types and scale, including a variety of

grasses, low shrubs, high shrubs as well as trees. This planting scheme provides additional built form mitigation, as well as privacy between the site and its surrounding neighbours.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The proposed development does not necessitate the removal of vegetation or important topographical features.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

A range of plant species which are to be used which will ensure the height, bulk and scale of the building is mitigated when viewed from the northern and western elevations of the site. The variation to the control is minor and the site is expected to provide for a reasonable level of low lying shrubs, medium high shrubs and canopy trees to mitigate height and bulk and scale.

- *To enhance privacy between buildings.*

Comment:

The amended landscape plan is considered acceptable with the amended planting scheme considered acceptable to ensure the amenity of adjoining properties are not adversely affected. The minor changes to the external elements (windows, balcony, landscaping) as proposed as part of the modification are considered to enhance privacy between neighbouring properties. The planting proposed along the northern elevation to the front of the dwelling is considered acceptable.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposal continues to provide for sufficient private open space within the rear of the site to meet the outdoor recreational opportunities to meet the needs of the occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

Adequate space will be retained for domestic service functions with the available private open space areas and surrounds of the buildings. The reduction of LOS will be replaced by a paved area which will continue to be used by the occupants of the dwelling.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposed areas of LOS are sufficient and will assist in water infiltration, thereby decreasing runoff. Furthermore, conditions included with this consent will ensure that stormwater generated from the development is appropriately managed.

Having regard to the above assessment, it is concluded that the proposed modification of 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 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 2021

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 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 to Modification Application No. Mod2021/0042 for Modification of Development Consent DA2019/1238 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 16 DP 14366,26 Seaview Avenue, CURL CURL, 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
Site / Roof / Sediment Erosion / Waste Management / Stormwater Concept Plan	10 May 2021	Action Plans
Proposed Lower Ground Floor Plan	10 May 2021	Action Plans
Proposed Ground Floor Plan	10 May 2021	Action Plans
Proposed First Floor Plan	10 May 2021	Action Plans
Northern Elevation	10 May 2021	Action Plans
East Elevation	10 May 2021	Action Plans
South Elevation	10 May 2021	Action Plans
West Elevation	10 May 2021	Action Plans
Long / Cross Section	10 May 2021	Action Plans
Driveway Plan and Long Section	10 May 2021	Action Plans
Pool Plan / Sections	10 May 2021	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate	11 January 2021	Efficient Living Pty Ltd

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

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Proposed Landscape Plan - Rev C	7 May 2021	ATC - A Total Concept

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

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

Signed



Penny Wood, Planner

The application is determined on 09/08/2021, under the delegated authority of:



Anna Williams, Manager Development Assessments