

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0772
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 64 DP 16078, 38 Makim Street NORTH CURL CURL NSW 2099
Proposed Development:	Modification of Development Consent DA2021/0290 granted for construction of a Secondary Dwelling
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:	Stephen Hugh Scott
Applicant:	Stephen Hugh Scott
Application Lodged:	11/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/10/2021 to 08/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 11 May 2021 under Development Application DA2021/0290 for construction of a secondary dwelling.

This application has been made pursuant to Section 4.55(1A) of the EP&A Act 1979 seeking to make the following amendments to the approved development:

- Raise the finished floor level by 150mm.
- Increase the height of the roofline by 450mm.

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 Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D2 Private Open Space
 Warringah Development Control Plan - D8 Privacy

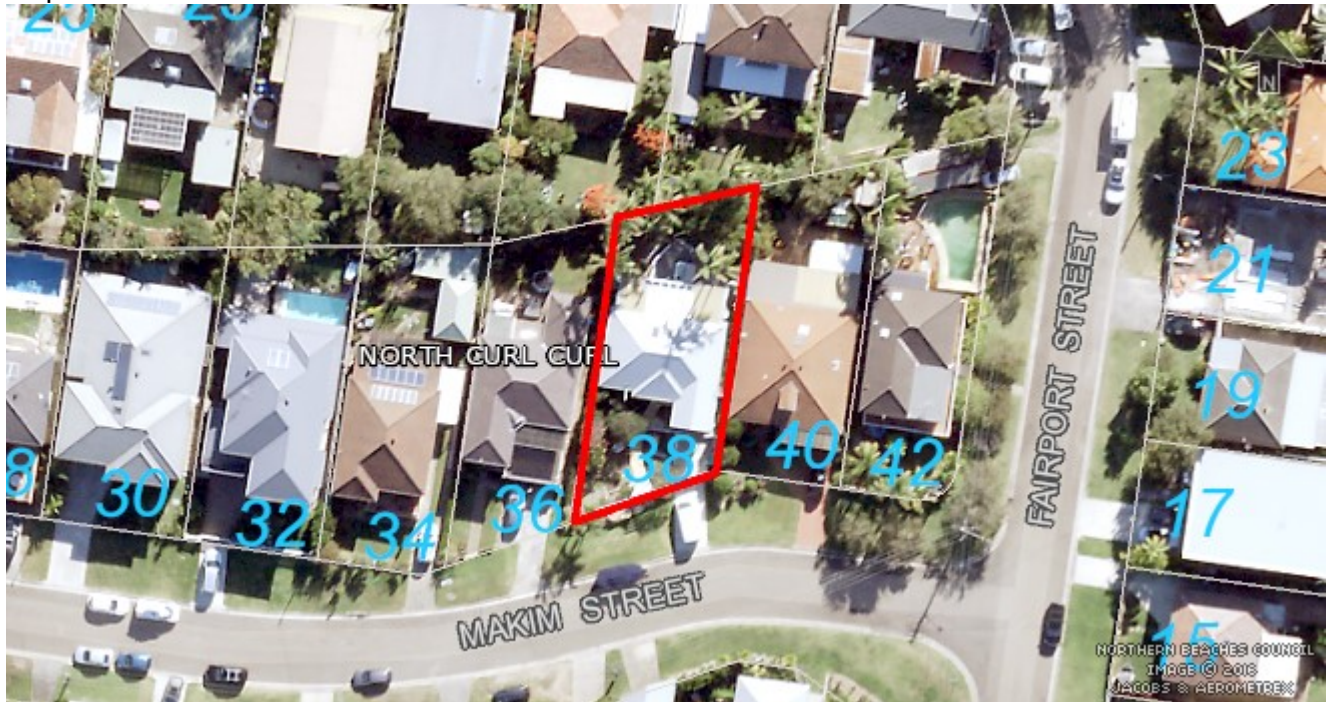
SITE DESCRIPTION

Property Description:	Lot 64 DP 16078 , 38 Makim Street NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Makim Street, North Curl Curl.</p> <p>The site is irregular in shape with a frontage of 16.485m along Makim Street and respective depths of 31.295m and 33.325m along the eastern and western side boundaries. The site has a surveyed area of 472.3sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the WLEP 2011 and accommodates a single storey dwelling house with a subfloor garage below.</p> <p>The site experiences a fall of approximately 2m that slopes away from the rear boundary (north) towards the frontage (south).</p> <p>Landscaping on the site consists of shrubs, small trees, palm trees and lawn areas.</p>

Description of Surrounding Development

The surrounding built environment is characterised by detached low density residential development, typically 1-2 storeys in height.

Map:



SITE HISTORY

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

- **Complying Development Certificate CDC2014/0314** for construction of a deck with roof approved by a Private Certifier.
- **Development Application DA2021/0290** for construction of a secondary dwelling approved by Council on 11 May 2021.
- **Construction Certificate CC2021/1074** for construction of a secondary dwelling approved by Council on 6 September 2021. A Notice of Commencement was subsequently submitted to Council.

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 DA2021/0290, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The modified development involves a minor increase in building height and does not exacerbate the perceived bulk and scale of the development. • The modified development is confined to the approved building footprint. • The modified development does not result in any additional amenity impacts.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<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 DA2021/0290 for the following reasons:</p> <ul style="list-style-type: none"> • The modified development maintains the approved land use, which relates to a secondary dwelling. • The modified development will not have a materially different impact when compared to the approved development.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
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 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	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 2011 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 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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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 (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 2011 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	No submissions were received in relation to this application.
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 25/10/2021 to 08/11/2021 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
Building Assessment - Fire	The application has been investigated with respect to aspects relevant

Internal Referral Body	Comments
and Disability upgrades	<p>to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling."

Comment:

The proposed use is defined under WLEP 2011 as a secondary dwelling, which has the same definition as the Standard Instrument definition.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The site currently accommodates a dwelling house. The proposed secondary dwelling will be established in conjunction with the principal dwelling on the site. The proposed secondary dwelling is detached from the principle dwelling.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and	The proposed secondary dwelling has a gross floor area of 27.4sqm, which complies with the maximum 60sqm requirement set out within this SEPP and the WLEP 2011. The site is not subject to a floor space ratio development standard.

(b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	
<p>(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:</p> <p>(a) site area if:</p> <p>(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or</p> <p>(ii) the site area is at least 450 square metres.</p> <p>(b) parking if no additional parking is to be provided on the site.</p>	The proposal is not being refused on the grounds stipulated within subclause (4).

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	<p>Consistent.</p> <p>This application does not propose any subdivision of the existing allotment.</p>

Conclusion

The proposed secondary dwelling is consistent with the SEPP (Affordable Rental Housing) 2009.

SEPP (Building Sustainability Index: BASIX) 2004

A revised BASIX Certificate has been submitted with the application (see Certificate No. 1183491S_02).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	92

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

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	3.95m (RL39.40)	4.4m (RL39.85)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(9) of the WLEP 2011 limits the gross floor area of secondary dwellings to 60sqm. The gross floor area of the proposed secondary dwelling equates to 27.4sqm, which complies with this requirement

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	2.95m*	3.1m	Yes
B3 Side Boundary Envelope	5m then projected at 45 degrees (east)	within envelope	-	Yes
	5m then projected at 45 degrees (west)	within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (east)	0.9m	-	Yes
	0.9m (west)	6.4m	-	Yes
B7 Front Boundary Setbacks	6.5m	rear of site and further than 6.5m	-	Yes
B9 Rear Boundary Setbacks	6m	0.9m	0.9m	No - however no further non-compliance
D1 Landscaped Open	40%	24.12%	24.12%	No - however no

Space and Bushland Setting		(113.9sqm) - no change	(113.9sqm) - no change	further non-compliance
D2 Private Open Space	60sqm with minimum dimensions of 5m	48.3sqm	48.3sqm	No - however no further non-compliance

Note: Development Application DA2021/0290 incorrectly identified the maximum wall height as 3.95m.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	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	No	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

B9 Rear Boundary Setbacks

The secondary dwelling approved under Development Application DA2021/0290 involved a numerically non-compliant rear setback of 0.9m. The rear setback non-compliance was supported on merit due to consistencies with the objectives of the control.

In assessing this particular Section 4.55(1A) Modification, it is noted that the works involve increasing the building height by 0.45m. The approved building footprint remains unchanged. It is considered that the objectives of this control are still achieved, noting the increase in building height does not exacerbate the perceived building bulk; does not result in significant overshadowing of adjacent properties; does not result in unacceptable privacy impacts; or impede significant view lines.

For these reasons, the approved non-compliance is supported on merit.

D1 Landscaped Open Space and Bushland Setting

Whilst numerically non-compliant with the control, the existing landscaped open space on the site remains unaltered. It is noted that the approved development under Development Application DA2021/0290 did not reduce the existing landscaped open space on the site. Therefore, no further consideration of this control is required for the purpose of this assessment.

D2 Private Open Space

The approved development under Development Application DA2021/0290 resulted in a numerically non-complaint private open space of 48.3sqm, where the control calls for 60sqm. Despite this, the non-compliance was supported on merit due to consistencies with the objectives of this control.

In assessing this particular Section 4.55(1A) Modification, it is noted that the modified works are confined to the approved building footprint and do not result in a further reduction in private open space. Therefore, no further consideration of this control is required for the purpose of this assessment.

D8 Privacy

The modified development has addressed Condition 7 of the consent, which read as follows:

The following amendments are to be made to the approved plans:

- *The glazed doors D1 on the north-eastern elevation must be amended to a window. The sill height of the window must be at least 1 metre above the finished floor level of the secondary dwelling.*

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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. Mod2021/0772 for Modification of Development Consent DA2021/0290 granted for construction of a Secondary Dwelling on land at Lot 64 DP 16078,38 Makim Street, NORTH 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
Sheet No. 1B	28/09/2021	Network Design
Sheet No. 2B	28/09/2021	Network Design
Sheet No. 3B	28/09/2021	Network Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1183491S_02	30/09/2021	Network Irrigation P/L

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.

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

Signed



Thomas Burns, Planner

The application is determined on 09/11/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments