

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2014/0250
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<b>Responsible Officer:</b>	David Auster
<b>Land to be developed (Address):</b>	Lot 32 DP 16602 , 1 Phyllis Street NORTH CURL CURL NSW 2099
<b>Proposed Development:</b>	Modification of DA2013/1038 granted for alterations and additions to a dwelling house, construction of a swimming pool, garage and fencing
<b>Zoning:</b>	LEP - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Warringah Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jeremy James Coleman
<b>Applicant:</b>	Rapid Plans

<b>Application lodged:</b>	24/11/2014
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	04/12/2014 to 19/12/2014
<b>Advertised:</b>	Not Advertised in accordance with A.7 of WDCP
<b>Submissions:</b>	0
<b>Recommendation:</b>	Approval

### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979,

and the associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B7 Front Boundary Setbacks

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 32 DP 16602 , 1 Phyllis Street NORTH CURL CURL NSW 2099
<b>Detailed Site Description:</b>	The site is on the corner of Phyllis Street and Ian Avenue. It is slightly irregular in shape and has a surveyed area of 481.3sqm. The site currently accomodates a detached two storey dwelling and detached garage at the southern end. There is a slight fall from west to east. Surrounding development consists of one and two storey dwellings. There is no particularly significant vegetation on the site.

Map:



## SITE HISTORY

The site has a history of residential use. The application (DA2013/1038) to be modified was approved by Council on 03/12/2013 and was for Alterations and additions to a dwelling house, Construction of a swimming pool, garage and fencing.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal involves the following modifications:

- Extension to the existing front deck
- Extension to proposed front deck
- Remove previously approved front gate and extend previously approved masonry wall to northern elevation
- Remove existing steel fencing and replace with masonry fencing to match existing
- Remove previously approved front entrance path and replace with tiered lawn area.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are: The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2013/1038, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 96(1A) - Other Modifications</b>	<b>Comments</b>
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	<b>Yes</b> The modification, as proposed in this application, is

<b>Section 96(1A) - Other Modifications</b>	<b>Comments</b>
	considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	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 DA2013/1038.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require, or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

## Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;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&amp;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&amp;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> <p><u>Clause 143A</u> of the EP&amp;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>
Section 79C (1) (b) – the likely impacts of the development,	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah



<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
including environmental impacts on the natural and built environment and social and economic impacts in the locality	Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

## **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

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

## **MEDIATION**

No requests for mediation have been made in relation to this application.

## **REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>
Landscape Officer	No objections to the proposed changes, no additional conditions.

<b>External Referral Body</b>	<b>Comments</b>
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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

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

#### **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 (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A168104). A condition has been included in the original consent 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 referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.956m	No change	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	7.6m	No change	Yes
B3 Side Boundary Envelope	5m	Breach on eastern side	No change	Yes
B5 Side Boundary Setbacks	0.9m	East: 900mm (condition to delete deck in side setback) South: 498mm new garage roof	No change	Yes
B7 Front Boundary Setbacks	6.5m (primary) 3.5m (secondary)	New works 7.75m New works 3.25m	4.9m No change	No Yes
B9 Rear Boundary Setbacks	6m	N/A (corner allotment)	N/A	N/A
D1 Landscaped Open Space and Bushland Setting	40%	13.7% (63.4sqm)	13.75% (66.2sqm)	Yes (improved from previous)

### 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
Side Setbacks - R2	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
R2 - All other land in R2 Zone	No	Yes
Front Boundary Exceptions - R2	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - one or two dwellings	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
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B7 Front Boundary Setbacks**

#### Description of non-compliance

The proposed extension to the front entry deck will be a minimum of 4.9m from the front boundary.

#### Merit consideration:

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

- *To create a sense of openness.*

#### Comment:

The proposed deck extension in the front setback area is open and un-roofed, and will maintain the existing setback of the dwelling. It will not significantly detract from the sense of openness in the area.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

#### Comment:

The proposed deck extension will maintain the setback of the existing dwelling, and in this regard will generally maintain the existing pattern of buildings and landscape elements. The removal of part of the front pathway will increase landscaping in the front setback area.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

#### Comment:

The proposed modifications are relatively minor, and will not detract from the quality of the streetscape.

- *To achieve reasonable view sharing.*

#### Comment:

No views will be unreasonably impacted upon.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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 effect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Warringah Section 94A Development Contribution Plan**

Section 94 contributions were levied on the Development Application.

## **CONCLUSION**

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

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

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

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

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

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

## **RECOMMENDATION**

THAT Council as the consent authority grant approval Modification Application No. Mod2014/0250 for

Modification of DA2013/1038 granted for alterations and additions to a dwelling house, construction of a swimming pool, garage and fencing on land at Lot 32 DP 16602,1 Phyllis 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA1003	19/11/2014	Rapid Plans
DA1011	19/11/2014	Rapid Plans
DA2001	19/11/2014	Rapid Plans
DA2002	19/11/2014	Rapid Plans
DA2003	19/11/2014	Rapid Plans
DA2004	19/11/2014	Rapid Plans
DA3001	19/11/2014	Rapid Plans
DA3002	19/11/2014	Rapid Plans
DA4001	19/11/2014	Rapid Plans
DA4002	19/11/2014	Rapid Plans

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Preliminary Geotechnical Assessment	7th August 2013	White Geotechnical Group

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

**Signed**

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**David Auster, Planner**

The application is determined under the delegated authority of:


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**Phil Lane, Development Assessment Manager**

**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

Notification Document	Title	Date
 2014/372709	Notification Map	04/12/2014



**ATTACHMENT C**

<b>Reference Number</b>	<b>Document</b>	<b>Date</b>
 2014/364829	Plan - Survey from CD	16/04/2013
 2014/364857	Report BASIX Certificate from CD	31/07/2013
 2014/364860	Report - Preliminary Geotechnical Assessment from CD	08/08/2013
 2014/364845	Plan - Notification from CD	19/11/2014
 2014/364868	Plans - Master Set from CD	19/11/2014
 2014/364847	Report Statement of Environment Effects from CD	20/11/2014
 2014/364864	Report - Flora and Fauna Assessment and Biodiversity Management Plan from CD	20/11/2014
 MOD2014/0250	1 Phyllis Street NORTH CURL CURL NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	24/11/2014
 2014/360674	DA Acknowledgement Letter - Rapid Plans	24/11/2014
 2014/364855	Plans - Internal from CD	25/11/2014
 2014/364737	Modification Application Form	26/11/2014
 2014/364739	Applicant Details	26/11/2014
 2014/364749	Certification of Shadow Diagrams with Plans	26/11/2014
 2014/364848	Plans - External from CD	26/11/2014
 2014/364865	R - Certification of Shadow Diagrams with Plans	26/11/2014
 2014/366795	File Cover	28/11/2014
 2014/366804	Referral to AUSGRID - SEPP - Infrastructure 2007	28/11/2014
 2014/369733	Request for Comments on Application - 1 Phyllis Street NORTH CURL CURL NSW 2099	01/12/2014
 2014/372706	Notification letter 11	04/12/2014
 2014/372709	Notification Map	04/12/2014
 2014/372712	notification letter & plan posted	04/12/2014
 2014/385448	Landscape Referral Response	16/12/2014
 2015/034698	working plans	09/02/2015