

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0644
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 33 DP 5659, 42 Surf Road NORTH CURL CURL NSW 2099
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1051 granted for the construction of a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Archer Properties No.13 Pty Limited
<b>Applicant:</b>	Archer Properties No.13 Pty Limited
<b>Application Lodged:</b>	24/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	02/09/2021 to 16/09/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 0.5%
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent DA2019/1051.

The modifications proposed include:

- Window alterations;
- Internal alterations;
- Relocation of Flue;
- Roof alterations;
- New privacy screens to front balconies; and
- External alterations, including:

- Minor extension to wall along eastern and western elevation at second floor level;
- Extension to entrance and rear living at ground floor level.

## 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 - 4.3 Height of buildings  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B5 Side Boundary Setbacks

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 33 DP 5659 , 42 Surf Road NORTH CURL CURL NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Surf Road, North Curl Curl.</p> <p>The site is regular in shape with a frontage of 9.145m along Surf Road and a depth of 32.205m. The site has a surveyed area of 321.9sqm.</p> <p>The site is located in the R2 Low Density Residential zone and accommodates a detached single storey dwelling house and a detached metal shed in the north-western rear corner.</p> <p>The site experiences a fall of approximately 3m that slopes towards the eastern front boundary and accommodates</p>

landscaped open space within the front yard, a small garden in the rear yard and paved open space within the rear yard.

The front portion of the site is mapped as being located within the 'Medium risk' flood precinct, whereas the rear portion of the site is mapped as being located within the 'Low risk' flood precinct under Council's provisions.

The site is mapped as containing 'Acid Sulfate Soils Class 5' and is mapped as being located within the 'Landslip Risk Area A' precinct under the provisions of the WLEP 2011.

### Detailed Description of Adjoining and Surrounding Development

Adjoining and surrounding development is characterised by one (1), two (2) and three (3) storey detached dwelling houses.

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:

- **Development Application 2019/1051** for Construction of a dwelling house Approved under delegation on 19 February 2020.
- **Development Application 2018/1932** for demolitions works and the construction of a dwelling house including a swimming pool refused by Council staff on 06 June 2019.

## 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 DA2019/1501, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The 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 DA2019/1501 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The approved use of the site will remain unchanged.</li> <li>• From both a qualitative and quantitative perspective (which includes (but is not limited to) building height, setbacks, landscaped area, etc.) the proposed modifications will not substantially alter the development from what was previously approved.</li> <li>• The proposal will have no additional impact on surrounding sites nor the public domain.</li> </ul> <p>The development, as proposed, has been found to be such that Council is not satisfied that the proposed works are</p>

Section 4.55 (2) - Other Modifications	Comments
	substantially the same as those already approved under DA2019/1501
(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 DA 2019/1051 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, and the Northern Beaches Community Participation 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 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) – 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



Section 4.15 'Matters for Consideration'	Comments
	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)(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&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 allow Council to request additional information. No additional information was requested in this case.</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>
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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic</p>

Section 4.15 'Matters for Consideration'	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/09/2021 to 16/09/2021 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
NECC (Coast and Catchments)	The proposed modifications will not impact coastal processes or access to the foreshore. Therefore they are supported for approval without conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed modifications comply with the flood requirements of the DCP and LEP are not anticipated to increase flood risk. No further conditions.

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, 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. 978256S\_08 dated 18 August 2021).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	60

### **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. Standard conditions recommended

**SEPP (Coastal Management) 2018**

The site is mapped as being located within the 'Coastal Environment Area' and 'Coastal Use Area' under the provisions of the SEPP (Coastal Management) 2018. Accordingly, the application is assessed against Clauses 13, 14 and 15 of the SEPP (Coastal Management) 2018.

**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.*
- (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:

The proposed development is not likely to adversely impact the environmental and cultural values of the 'Coastal Environment Area'.

**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 proposed development will not impact the existing provisions of access to and along the foreshore area. Furthermore, the proposal is not likely to adversely impact the visual amenity of the coast, nor will it effect Aboriginal cultural heritage.

### 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 proposed development is not likely to cause increased risk of coastal hazards on the subject site and adjoining properties.

Having regard to the above assessment, it is considered that the proposed development is consistent with the requirements of the SEPP (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	8.5m	8.55m	0.5%	No

## Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

## Detailed Assessment

### **4.6 Exceptions to development standards**

In accordance with the Land and Environment Court caselaw of *North Sydney Council v Michael Standley & Associates Pty Ltd* [1009] NSW 163 (*Michael Standley & Associates*) the Court determined that Section 96 (now Section 4.55) is a "free-standing provision" meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". This means that Clause 4.6 of the MLEP 2013 does not strictly apply to the assessment of a modification application.

Notwithstanding the findings in *Michael Standley & Associates*, the Court later detailed in *Gann v Sutherland Shire Council* (2008) that consideration should still be given to the relevant standard objectives:

*"This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply."*

Accordingly, with consideration to the above caselaw, a merit assessment of the variation sought against the approved development is undertaken below to identify the developments consistency with the zone objectives and prevailing development standard objectives.

### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.55m
Percentage variation to requirement:	0.5%

The proposal must satisfy the objectives of Clause 4.3 Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP

2011 are:

(1) The objectives of this clause are as follows:

**a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,**

Comment:

The height of the proposed development is consistent with the neighbouring properties along the western side of Surf Road.

**b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,**

Comment:

The solar, privacy and views impacts of this aspect of the development are minor and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

**c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,**

Comment:

The proposed modification are minor will not have any unreasonable impact on the Curl Curl coastal environment

**d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,**

Comment:

The proposed a minor extension to the second floor. The proposed development is unlikely to have any unreasonable visual impact when viewed from the adjoining park to the east.

The development satisfies this objective.

#### Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

#### Comment:

The proposed development seeks to alter the existing dwelling house and is considered to comply with the above objective. The house remains for residential use.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal is for residential use

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

No change to landscaping is proposed. The proposed development will in harmony with the natural environment.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

(1) The objectives of this clause are as follows:

***(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.***

Comment:

The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

***(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.***

Comment:

The proposed height of building non-compliance will allow for greater privacy between neighbouring properties.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

**Warringah Development Control Plan**

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies

B1 Wall height	7.2m	8.14m	8.15m	No
B3 Side Boundary Envelope	North - 5m	One encroachment for a height ranging between 0.93m and 1.68m for the entire northern elevation	Wall extension will see a variation of up to 1.5m along the southern elevation	No
	South - 5m	One encroachment for a height ranging between 1.05m and 1.61m for the entire southern elevation	Wall extension will see a variation of up to 1.7m along the southern elevation	No
B5 Side Boundary Setbacks	0.9m	0.21m (pergola/porch) (North)	0m	No
	0.9m	1.04m - 2.29m (dwelling) (North)	0.92m - 1.02m	Yes
	0.9m	0.86 (garage) (South)	0.85m	No
	0.9m	0.85m - 1.59m (dwelling) (South)	0.85m - 1.4m	No
B7 Front Boundary Setbacks	6.5m	4.8m (first floor balcony) and 6.5m (garage) (East)	7m	Yes
B9 Rear Boundary Setbacks	6m	6.76m (West)	9.1m	Yes
D1 Landscaped Open Space and Bushland Setting	40% (128.76sqm)	17.1% (55.2sqm)	No Change	N/A

#### 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
C6 Building over or adjacent to Constructed Council Drainage Easements	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	N/A	N/A
D2 Private Open Space	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
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
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

### Detailed Assessment

#### **B1 Wall Heights**

##### Description of non-compliance

Clause B1 of the WDCP 2011 stipulates that walls are not to exceed 7.2m from the existing ground level to the underside of the ceiling on the uppermost floor.

The proposed development would result in a maximum wall height of 8.15m above the existing ground level, non-compliant with the numeric control. This represents a 13.10% variation to the numeric control.

##### Merit Assessment

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

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

##### Comment:

The development is located within the permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwelling on the western side of Surf Road. The proposed development integrates staggered wall planes and a suitable front setback to

reduce apparent building mass. The development responds appropriately to the constraints of the site, and is satisfactory minimised as viewed from public open space and adjoining properties.

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

Comment:

There are no significant native trees located on the subject site or on adjoining properties.

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

Comment:

The proposed development will not give rise to unreasonable view loss from adjoining properties and public open space.

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

Comment:

Amenity aspects of this development including solar access, privacy and views loss of this development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces. Solar access, privacy and view loss are addressed separately within this report.

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

Comment:

No excavation proposed under this modification application.

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

Comment:

The proposed roof pitch and design is compatible with the variety of room forms within the locality.

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

### **B3 Side Boundary Envelope**

Description of non-compliance

Clause B3 of the WDCP 2011 stipulates that buildings are to be projected at 45 degrees from 5m above the existing ground level, measured from the side boundaries. The proposed modifications encroaches

into the prescribed building envelope along the northern elevation at a height up to 1.7m. The proposed modification encroaches into the southern elevation at height up to 1.5m..

### Merit Assessment

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

### Comment:

The non-compliance is not to an extent that will result in a development that is out of character for the area or is visually dominant by virtue of its height and bulk. Furthermore the flat roof form adopted will minimise the overall height and bulk of the development. The scale of the overall development is consistent with the general pattern of development within the street.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

### Comment:

The development has been designed in a manner that does not unreasonably nor detrimentally overshadow nor overlook adjoining and nearby properties. Adequate spatial separation is proposed between buildings. The development satisfies this objective. It is noted that full compliance with the building envelope control is challenging on this site with a width of 9m.

- *To ensure that development responds to the topography of the site.*

### Comment:

The development appropriately responds to the topography of the site and is designed to minimise the overall bulk and scale of the development and resulting amenity impacts.

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

## **B5 Side Boundary Setbacks**

### Description of non-compliance

Clause B5 of the WDCP 2011 stipulates that development is to be setback at least 0.9m from side boundaries.

The application proposes the following non-compliant side boundary setbacks:

- The pergola/porch on the northern elevation of the ground floor has a nil setback to the northern boundary.

- The carport/basement alterations would be setback 0.86m from the southern side 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 provide opportunities for deep soil landscape areas.*

#### Comment:

No change to landscape open space proposed.

- *To ensure that development does not become visually dominant.*

#### Comment:

The non-compliance is at ground level and is a minor alteration to the approved. The proposed changes will not result in the development becoming visually dominant.

- *To ensure that the scale and bulk of buildings is minimised.*

#### Comment:

The porch area servicing is located at or close to ground level and is not considered to be excessive in its bulk or scale.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

#### Comment:

The alterations does not compromise privacy, and does not cause any shadowing over and above the existing structure.

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

#### Comment:

The development is not found to result in any unreasonable view loss from the public domain or private properties.

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

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

## **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. Mod2021/0644 for Modification of Development Consent DA2019/1051 granted for the construction of a dwelling house on land at Lot 33 DP 5659,42 Surf Road, 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>
3.02/ Basement Plan/ Revision G	12 August 2021	Jeff Karkens Designers
3.03/ Ground Floor Plan/ Revision G	12 August 2021	Jeff Karkens Designers
3.03/ First Floor Plan/ Revision G	12 August 2021	Jeff Karkens Designers
3.04/ Roof and Site Plan/ Revision G	12 August 2021	Jeff Karkens Designers
4.01/ North and East Elevation/ Revision G	12 August 2021	Jeff Karkens Designers
4.02/ South and West Elevations/ Revision G	12 August 2021	Jeff Karkens Designers
4.03/ Sections/ Revision G	12 August 2021	Jeff Karkens Designers

<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>
BASIX Certificate No. 978256S_08	18 August 2021	ECOMODE Design

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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



**Maxwell Duncan, Planner**

The application is determined on 06/10/2021, under the delegated authority of:



*REngd.*

**Rebecca Englund, Acting Development Assessment Manager**