



## **40 GRIFFIN ROAD NORTH CURL CURL**

### **STATEMENT OF ENVIRONMENTAL EFFECTS FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DUAL OCCUPANCY**



Report prepared for  
**Buck & Simple**  
December 2019

## Contents

1. INTRODUCTION
2. THE SITE AND ITS LOCALITY
3. SITE PHOTOS
4. PROPOSED DEVELOPMENT
5. STATUTORY FRAMEWORK
6. SECTION 4.15
7. CONCLUSIONS

APPENDIX 1 – VIEW LOSS

APPENDIX 2 - CLAUSE 4.6 – HEIGHT

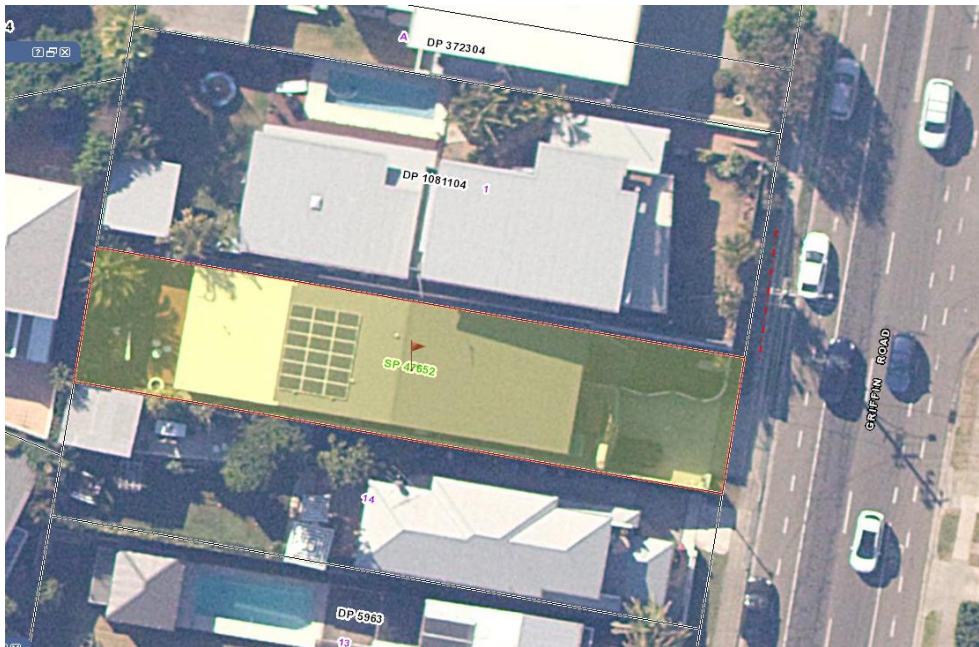
APPENDIX 3 – DEVELOPMENT CONSENT 89/548

## 1. Introduction

- 1.1 This is a statement of environmental effects for alterations and additions to an existing dual occupancy, including a first-floor addition at 40 Griffin Road North Curl Curl.
- The report describes how the application addresses and satisfies the objectives and standards of the Warringah Local Environmental Plan 2011, the Warringah Development Control Plan 2011 and the heads of consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended).
- 1.2 This statement of environmental effects has been prepared with reference to the following:
- ◆ Survey prepared by Bee and Lethbridge
  - ◆ Site visit
  - ◆ DA Plans prepared by Buck & Simple
  - ◆ BASIX Certificate
  - ◆ Geotechnical Report prepared by White Geotechnical Group
- 1.3 The proposed development is compliant with the objectives of all Council controls, considerate of neighbouring residents and streetscape and results in improved amenity for the residents of the site. It is an appropriate development worthy of Council consent.

## 2. The site and its locality

- 2.1 The subject site is located on the western side of Griffin Road, approximately 9 metres south of its intersection with Austin Avenue in North Curl Curl. The site is legally described as SP 47652.
- 2.2 It is a rectangular shaped lot with a width of 10.06 metres and a depth of 45.72 metres. The site has an area of 459.87m<sup>2</sup> and slopes from north to south.
- 2.3 The site is currently occupied by a two-storey rendered brick and clad dwelling with a metal roof. The site is set within a residential lot and enjoys water views to Curl Curl Beach to the south east.
- 2.4 The site is surrounded by detached residential dwellings and multi-dwelling residential units in all directions. The site is located in close proximity to North Curl Curl shops and retail and public transport services on Pittwater Road.



**Figure 1. The site and its immediate surrounds**



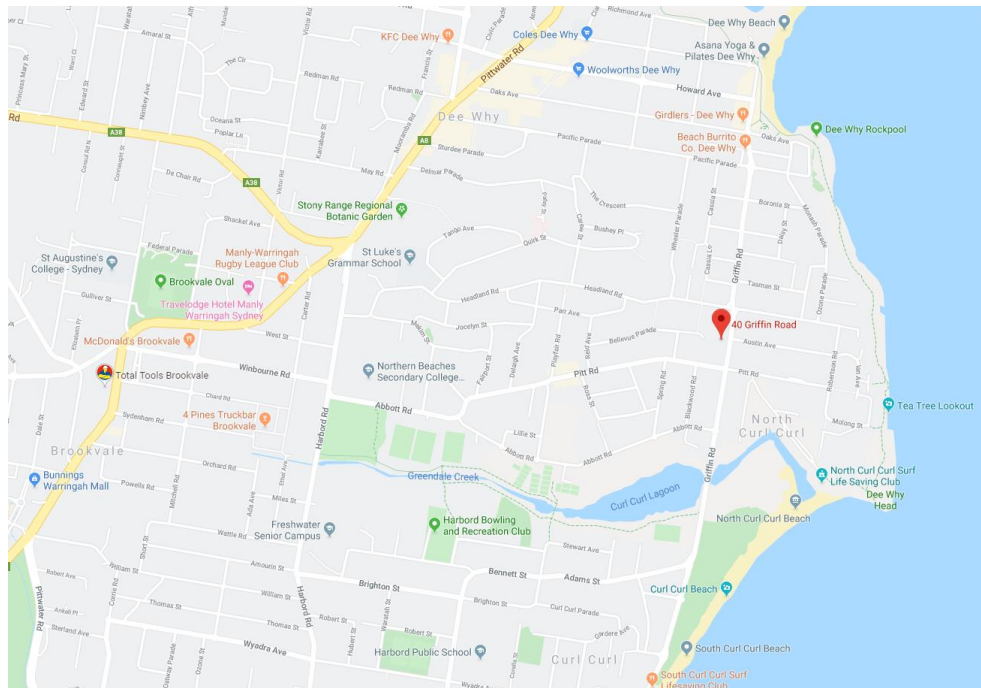


Figure 2. The site within the locality

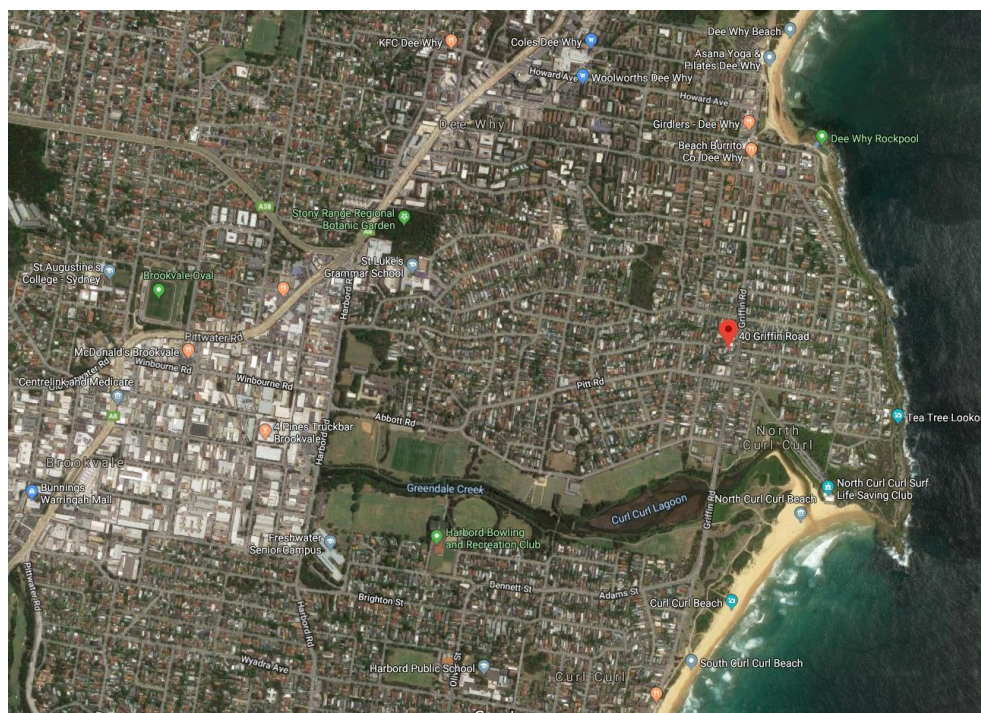


Figure 3. Aerial image of the site within the locality

### 3. Site Photos



Figure 4. The existing front dwelling, view from Griffin Road



Figure 5. The existing dwellings, viewed from Griffin Road





Figure 6. The front entry stairs looking east towards Griffin Road



Figure 7. The front deck and view to Curl Curl Beach, looking south east.



**Figure 8.** The existing garages, looking west



**Figure 9.** The view from the site, looking south





Figure 10. The rear of the site, looking east (40a)



Figure 11. The rear yard, looking north (40a)

## 4. Proposed Development

The proposed development is for alterations and additions to the existing attached dual occupancy. The alterations and additions include a new carport on the street frontage and a new first floor addition, resulting in one 5-bedroom dwelling and one 1-bedroom dwelling on the subject site.

The proposed alterations and additions remain consistent with the streetscape and the locality. The proposal is consistent with Council controls, ensures privacy and views are maintained for both neighbours and the subject site.

The alterations and additions to the dwelling will be made up as follows:

### Site

- Demolish the masonry fence and landscaping in the front yard,
- Relocation of the power pole,
- A new double carport and vehicle gate, bin storage area and pedestrian access.

### Basement

- Demolish the garage partition wall and roller doors, southern masonry wall and glazing, bathroom fittings and fixtures and landscaping along southern boundary,
- Convert the garage to Bed 5,
- Retain and enlarge Bed 4 and the bathroom,
- Convert the storage area to a music room,
- Retain the existing storeroom, wine cellar and staircase to access the ground floor,
- Replace windows on southern wall with recessed glass bricks.

### Ground Floor Dwelling 1

- Demolish the eastern front wall and glazing, southern dining room window, northern doorway, northern bathroom window and northern bedroom window,
- Construct a new kitchen and doors to access the front deck,
- Refurbish the laundry and bathroom,
- Convert northern bedroom to a staircase to access the new first floor,
- Retain Bed 2 and 3.

### Ground Floor Dwelling 2

- Demolish the northern bedroom window and wall between the bathroom and Bed 2,
- Construct a new entry and hallway,
- Refurbish the bathroom,
- Retain the kitchen, lounge, dining, master bedroom and ensuite.
- New roof over rear deck

**First Floor (new level)**

- Master Bedroom with ensuite and WIR
- Staircase to access the ground floor
- Study
- Lounge
- Deck including spa and reflection pond perimeter

## 5. Statutory Framework

### 5.1 State Environmental Planning Policies

#### State Environmental Planning Policy (Coastal Management) 2018

The site is mapped as 'Coastal Environment Area' by State Environmental Planning Policy (Coastal Management) 2018, accordingly the consent authority must consider clause 13 of the SEPP.

#### **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,*

The proposed development is located within the footprint of the existing dwelling and on disturbed areas of the site. It will not impact upon the biophysical, hydrological or ecological environments.

*(b) coastal environmental values and natural coastal processes,*

There will be no impact on environmental values or natural coastal processes.

*(b) 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,*

The proposal will not result in a decrease to water quality leaving the site.

*(c) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

There will be no impact on vegetation, habitats, headlands or 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,*

The proposed development will not result in any change to the existing access to and along the foreshore and beach.



*(f) Aboriginal cultural heritage, practices and places,*

The location of the proposed addition is highly disturbed, there will be no impacts on Aboriginal cultural heritage, practices and places.

*(g) the use of the surf zone.*

There will be no impact on the surf zone.

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

Schedule 1 of the Environmental Planning and Assessment Regulation (2000) sets out the requirement for a BASIX certificate to accompany any BASIX affected building, being any building that contains one or more dwellings, but does not include a hotel or motel. SEPP BASIX applies to the proposal and a compliant BASIX certificate is provided with this application.

#### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 replaces the repealed provisions of clause 5.9 of the standard instrument LEP relating to the preservation of trees and vegetation.

The aims of this Policy are to protect the biodiversity values of trees and other vegetation, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The development does not propose the removal of any trees. New landscaping is proposed within the front setback as detailed on the attached plans.

## 5.2 Warringah Local Environment Plan 2011

### Zoning

The site is zoned R2 Low Density Residential, pursuant to the provisions of the Warringah Local Environment Plan 2011.

The proposed development is for alterations and additions to an existing dual occupancy. Although dual occupancies are no longer a permissible land use in the R2 zone, the property benefits from existing use rights and the existing use is protected by Clause 4.66 of the EPA Act. According to this section, nothing can prevent the continuance of an existing approved use.

Furthermore, Clause 41 of the EPA Regulation provides that an existing use can be expanded, intensified, altered, or rebuilt, thus permitting the proposed alterations and additions.

The existing use rights are protected pursuant to Development Consent No.89/548 for alterations and additions to an existing house to create an attached dual occupancy. A copy of this consent is provided at Appendix 3.



Figure 12. Extract from Warringah LEP zoning map

## **Demolition**

Minor demolition works are proposed, as described above and illustrated in the attached DA plan set, to allow for the construction of the proposed alterations and additions.

## **Height of Buildings**

The LEP restricts the height of any development on the subject site to 8.5 metres. The proposed development will result in a maximum building height of 9.2 metres. A variation to the maximum height control, is considered appropriate in this case for the following reasons:

- The proposed development will result in a similar or lesser scale development than surrounding properties.
- The non-compliance will not result in any unreasonable view loss, loss of privacy or increase in shadowing for neighbouring properties
- The non-compliance is largely the result of considering the existing excavated basement area. The majority of the development presents with a compliant building height to the street and neighbouring properties.

A clause 4.6 variation report is provided with this development application at Appendix 2.

## **Heritage**

The site is not a heritage item, located within a heritage conservation area or located near any heritage items, which will be impacted by the proposed development.

## **Acid Sulfate Soils**

The site is not located in an area nominated as Acid Sulfate soils.

## **Earthworks**

Minor earthworks are proposed to allow construction of the new carport, bin storage area and pedestrian entrance. All works will be undertaken in accordance with engineering details.

## **Development on Sloping Land**

The site is located in the area nominated on the LEP maps as Area B – Flanking Slopes 5 to 25. As such the consent authority must be satisfied that:

- (a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*

- (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- (c) the development will not impact on or affect the existing subsurface flow conditions.*

The attached geotechnical preliminary assessment demonstrates the proposal complies with Council controls.

### **5.3 Warringah Development Control Plan 2011**

The relevant sections of the Warringah DCP 2011 are addressed below.

#### **Part B General Controls**

##### **Wall Heights**

A maximum wall height of 7.2 metres is permitted by the DCP.

The alterations and additions propose a compliant maximum wall height of 4.4 metres, with articulation incorporated into each level of the building. The proposed development steps back from the street frontage reducing the apparent bulk when viewed from the public domain, and presents as an attractive addition to the streetscape.

##### **Side Building Envelope**

The site requires a side boundary envelope of 5m/45°. The development proposes a minor variation to the building envelope control on the north (being the eaves only) and a larger variation to the south.

A variation is considered appropriate, in this case, as the first-floor building setbacks in this location are compliant and the building incorporates articulation and a variety of building materials, which alleviates bulk when viewed from the street. The proposed breach is largely the result of taking into account the existing excavated basement area and is limited and reducing as the site steps up to the rear.

The proposed development provides a modern design and roof pitch, consistent with surrounding properties, when viewed from Griffin Road.

##### **Side Boundary Setbacks**

Side setbacks of 900mm are permitted on the subject site.

The proposed alterations and additions propose compliant side setbacks of a minimum 900mm (south ground and first floor) and 1 metre (north ground floor) and 1.6 metres (north first floor).



A 0-metre setback is proposed to be retained for the southern boundary basement side setback. The existing windows on this elevation are proposed to be removed to improve privacy between properties with glass bricks as a replacement.

### **Front Setback**

A front setback of 6.5 metres is required on the site. No change is proposed to the existing, compliant 9.7 metre front setback to the dwelling.

A 0-metre front setback is proposed to the carport. A variation to the front boundary setback is considered appropriate, in this case as Griffin Road has an established pattern of carports and garages within the front setback, as illustrated in Figures 13 - 16.

Further, the existing garages are non-compliant with current Australian Standards and are not practical for modern vehicles. This is discussed in more detail under 'parking' below.



**Figure 13. Carport at No. 34 Griffin Rd**



**Figure 14. Garage at No.46 Griffin Rd**



**Figure 15. Carport at No. 67 Griffin Rd**



**Figure 16. Carport at No.25 Griffin Rd**

### **Rear Setback**

A rear building setback of 6 metres is required on the site.

The existing rear setback of the dwelling is compliant at 7.5 metres.

A roof over the existing deck with a setback of 5.380m is proposed to provide a shaded outdoor area for the rear dwelling. This variation is of minimal bulk and scale being an open structure and will be to the benefit of neighbours with regard to privacy.

### **Part C Siting Factors**

#### **Traffic Access and safety**

No change is proposed to the existing vehicular access and crossover from Griffin Road.

#### **Parking**

A new double carport and vehicle gate is proposed within the front setback, providing onsite carparking for 4 vehicles.

The site contains 2 existing lock up garages, which will be converted to habitable space. The existing garages are non-compliant with current Australian Standards and are not practical for modern vehicles. The northern garage has a width of 2.28 metres – 2.48 metres and a depth of 5 metres. The southern garage has a width of 2.6 metres and a depth of 5 metres.

The proposed double carport, forward of the building line presents a practical location to provide 2 x 2 stacked onsite carparking spaces, with compliant dimensions for residents. As described above, Griffin Road has an established pattern of carports and

garages within the front setback and the proposal is consistent with the surrounding streetscape.

### **Storm water**

The proposed alterations and additions will be connected to Council's existing drainage network.

Rainwater will be included on the ground level (southern walkway) as proposed by the BASIX Certificate and reused onsite.

### **Excavation and Landfill**

Earthworks are proposed to level the area where the new carport is proposed. All works will be undertaken in accordance with engineering details.

The attached geotechnical report demonstrates the geological stability of the proposed work. The cut proposed will be appropriately disposed of as detailed in the waste management plan, and drainage patterns will be unaffected by the works.

### **Demolition and Construction**

The proposed alterations and additions will involve demolition works as detailed above and in the attached plan set. All demolition and construction works will be undertaken as required by Council controls and compliant with any relevant conditions of consent.

### **Waste Management**

Appropriate waste management will be undertaken during the demolition and construction process. All demolished materials will be recycled where possible, which is detailed in the accompanying Waste Management Plan.

A new screened bin storage area for both dwellings is proposed forward of the building line, with waste to be collected by Councils regular service.

## **Part D Design**

### **Landscaping and Open space and bush land setting**

The DCP requires 40% landscaping on the site which is equivalent to 183.96m<sup>2</sup> for the site area of 459.9m<sup>2</sup>.

The existing landscaped area on the site is non-compliant at 12.8% or 59m<sup>2</sup>. The development proposes a landscaped area of 13.3% or 61m<sup>2</sup>.

A variation is considered appropriate, in this case, as the proposal will provide an improvement to the landscaped area on the site, including an increase in landscaping



on the Griffin Road frontage. In addition, the development will allow each dwelling to achieve a compliant area of private open space, despite the non-compliant landscaped area, thus remaining consistent with the objectives of this control.

### **Private open space**

The DCP requires a minimum private open space area of 30m<sup>2</sup> (with minimum dimensions of 3 metres) for dwelling 1 and 60m<sup>2</sup> (with minimum dimensions of 5 metres) for dwelling 2.

Dwelling 1 has an existing non-compliant private open space area of 30m<sup>2</sup>, with a minimum dimension of 5.5 metres. The development proposes a compliant private open space area of 84m<sup>2</sup>, with minimum dimensions of 6 metres. The additional private open space for dwelling 1 is proposed on the new first floor terrace.

Dwelling 2 has a compliant private open space area of 78m<sup>2</sup>, with minimum dimensions of 7.8 metres. This area is provided in the rear yard and no change is proposed.

### **Noise**

The development is appropriate and will not result in noise levels inappropriate to a residential area. The upper level deck areas are well screened, include an acoustically housed spa pump and will result in similar noise levels to all the surrounding dwellings which have been designed to maximise views to the water from upper level deck areas.

The site is not located in close proximity to a noise generating activity.

### **Access to sunlight**

At least 50% of the private open space of the subject site and the adjoining dwellings are required to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21 by this clause DCP.

The shadow diagrams included with this application demonstrate that both the subject site and the adjoining property to the south, already experience shadowing in excess of Councils control.

The proposed development will slightly increase shadowing to the rear yard of No. 38 Griffin Road at 12pm, however this property already experiences significant shadowing resulting from the fact that it is located on the southern side of the subject site.

Shadow elevations provided with this application demonstrate the following:

### Observations

**9am, 10am and 11am** – One ground floor window will experience an increase in shadowing and a small portion of one first floor window will receive additional solar access.

**12pm** – A small portion of one first floor window will experience an increase in shadowing and a small portion of two first floor windows will receive additional solar access.

**1pm** – A small portion of two first floor windows will experience an increase in shadowing and a small portion of one first floor and one ground floor window will receive additional solar access.

**2pm** – A small portion of two first floor windows will experience an increase in shadowing.

**3pm** – A small portion of one first floor window will experience an increase in shadowing.

It is concluded that the private open space of No 38 Griffin Road already experiences significant shadowing due to its orientation and the development will result in a very minor, negligible increase in shadowing of the rear yard at 12pm. The private open space cannot currently comply with Councils controls.

In addition, the proposed development will result in an increase to shadowing of one ground floor, north facing window between 9am and 11am on 21 June. The proposed increase is considered reasonable as the adjoining dwelling retains direct solar access to the first-floor windows and achieves some direct solar access to ground floor windows from 11am to 1pm.

### **Views**

The subject site and adjoining properties enjoy water views to the south east over Curl Curl Beach. The proposed development will result in some view loss from a bedroom at No. 42 Griffin Road, however the alterations and additions have been designed to retain the more significant view from the living room of No 42 Griffin Road.

A view loss assessment is provided as Appendix 1.

### **Privacy**

Privacy will be retained for neighbours with ample setbacks and no direct overlooking into any key living areas.

The proposed first floor terrace incorporates privacy screening to No. 42 Griffin Road and balustrading along both side boundaries.

### **Building Bulk**

The proposed alterations and additions incorporate articulation and balconies to alleviate bulk. The alterations and additions are consistent with the existing built form, streetscape and surrounding dwellings, with the overall impact being a modern, aesthetically pleasing and complimentary addition to Griffin Road.

### **Building Colours and Materials**

The proposed building materials include natural stone and timbers. See the materials schedule included with the DA plans.

All materials and finishes are complementary to the residential surrounds and consistent with a modern finish.

### **Roofs**

The proposed roof design has a varying degree pitch and will be constructed of metal sheeting. Eaves are incorporated for shading and materials will be non-reflective.

### **Glare & Reflection**

Materials have been chosen to ensure no glare or reflection issues.

### **Front Fences and Front Walls**

A new front fence, pedestrian access gate and vehicle access gate are proposed. The new fence and gates will be metal with 50% gaps as required. A height of 1.2-1.5 metres is proposed, which is reasonable and appropriate in this trafficable location.

### **Site Facilities**

The existing dwellings have appropriate waste, recycling areas and drying facilities.

### **Swimming Pools and Spa Pools**

A new spa is proposed on the first floor. In accordance with the DCP the spa is not located in the front setback and is not located near any trees.

### **Safety and Security**

An ability to view the street frontage is retained allowing for casual surveillance, which is to the benefit of the safety and security.

### **Conservation of Energy and Water**

The design has achieved a BASIX Certificate which accompanies the application.

## **Part E Design**

### **Preservation of Trees or Bushland Vegetation**

The development does not propose the removal of any trees. New landscaping is proposed on the site as detailed in the attached landscape plan.

### **Retaining unique Environmental Factors**

The development will have no impact on any unique environmental factors in the area.

### **Wildlife Corridors**

There will be no impact on any valued wildlife as a result of the proposed dwelling.

### **Landslip Risk**

A geotechnical report has been prepared in support of the application in its current form.



## 6. Section 4.15 Considerations

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines to help identify the issues to be considered have been prepared by the former Department of Urban Affairs and Planning. The relevant issues are:

### **The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations**

This report clearly and comprehensively addresses the statutory regime applicable to the application and demonstrates that the proposed land use is complimentary and compatible with adjoining development. The proposal achieves the aims of the Warringah LEP and DCP.

The development is permissible in the zone.

### **The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

#### 7.1. Context and Setting

*What is the relationship to the region and local context in terms of:*

- the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

These matters have been discussed in detail in the body of the statement.

*What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

The proposed alterations and additions have been designed to complement the site and its surrounds. The development is appropriate and will have negligible impact on adjacent properties.

## **7.2. Access, transport and traffic**

*Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:*

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

The proposed development will utilise the existing driveway crossover and provide a new double carport. No conflict or issues will arise as a result of the proposed development.

## **7.3. Public domain**

The proposed development will have a positive impact on the public domain as the proposal is consistent with the character and streetscape of the coastal area.

## **7.4. Utilities**

There will be no impact on the site, which is already serviced.

## **7.5. Flora and fauna**

There will be no impact.

## **7.6. Waste**

There will be no impact.

## **7.7. Natural hazards**

The site is affected by slip. A report has been provided by an expert regarding the geotechnical aspects of the site and is supportive of the proposal subject to recommendations. This report accompanies the development application.

## **7.8. Economic impact in the locality**

There will be no impact, other than the possibility of a small amount of employment during construction.

## **7.9. Site design and internal design**

*Is the development design sensitive to environmental conditions and site attributes including:*

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

The proposed development is highly appropriate to the site regarding all of the above factors. The development fits well within the context of the surrounds and is an appropriate scale, well-suited to its residential locality.

*How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The proposed development will comply with the provisions of the Building Code of Australia. Additionally finishes, building materials and all facilities will be compliant with all relevant Council controls.

## **7.10. Construction**

*What would be the impacts of construction activities in terms of:*

- *the environmental planning issues listed above?*
- *site safety?*

Site safety measures and procedures compliant with relevant legislation will ensure that no site safety or environmental impacts will arise during construction.

### **The suitability of the site for the development**

*Does the proposal fit in the locality?*

- *are the constraints posed by adjacent developments prohibitive?*

- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any unusual development constraints.

*Are the site attributes conducive to development?*

The site is appropriate for the alterations and additions proposed.

#### **Any submissions received in accordance with this Act or the regulations**

It is envisaged that the consent authority will consider any submissions made in relation to the proposed development.

#### **The public interest**

It is considered that the proposal is in the public interest as it allows for appropriate use of an existing residential site.

Section 4.15(1) of the Environmental Planning and Assessment Act has been considered and the development is considered to fully comply with all relevant elements of this section of the Environmental Planning and Assessment Act 1979.

## **8. Conclusions**

- 8.1 The proposed development for alterations and additions to the existing dual occupancy at 40 Griffin Road North Curl Curl is appropriate considering all State and Council controls.
- 8.2 When assessed under the relevant heads of consideration of s4.15 of the Environmental Planning and Assessment Act, the proposed development is meritorious and should be granted consent.
- 8.3 Considering all the issues, the fully compliant development is considered worthy of Council's consent.

**Sarah McNeilly**  
Town planner  
BTP MEL



## Appendix 1 – View Loss Analysis

*Tenacity Consulting v Warringah Council (2004) NSWLEC 140. The Planning Principle established a four-step process for considering the impact of a development on views.*

**Step 1. An assessment of the value of views to be affected by reference to their nature, extent and completeness.**

The view subject to this assessment is from No. 42 Griffin Road. The nature of the views under assessment are views to Curl Curl Beach to the south east.



**Figure 1: Aerial Image of the subject site and views subject to this assessment**

***Step 2. A consideration of how views are obtained and what part of the property the views are obtained from.***

The affected views are to Curl Curl Beach and are obtained from a master bedroom and living room at No. 42 Griffin Road.



**Figure 2: View from No. 42 Griffin Road (Master Bedroom)**



**Figure 3: View from No. 42 Griffin Road (Living Room)**



***Step 3. A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe or devastating.***

The extent of the impact, in terms of severity, is considered minor for No. 42 Griffin Road. The proposed alterations and additions will have a minor impact on the views from No. 42 towards Curl Curl Beach.

The design of the proposed alterations and additions at No. 40 has sought to minimise the impacts to No. 42 by increasing the roof height and providing semitransparent screening so some views from the master bedroom can be maintained. The roof in this location will exceed the maximum building height, however the increase in height results in a reduction in view loss, rather than an increase. This is illustrated in Figures 5 and 6 where the proposed roof height is illustrated alongside a compliant roof height.

The more significant view from the living room will not be impacted upon by the proposed development.



**Figure 4: Proposed view from No. 42 Griffin Road (Living Room)**



**Figure 5: Proposed view from No. 42 Griffin Road (Master Bedroom)**



**Figure 6: View with a compliant roof height from No. 42 Griffin Road (Master Bedroom)**

***Step 4. An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.***

The proposed development is considered reasonable, as although there will be a minor impact on views from the master bedroom of No. 42, the proposed roof design has sought to minimise these impacts. Further, the more significant view from the living room will not be impacted by the proposal.



## **Appendix 2 - Clause 4.6 – Exceptions to Development Standards- Height of Buildings**

### **1. Introduction**

Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The aims and objectives of the Warringah LEP 2011 Clause 4.6 are as follows:

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

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

Under Clause 4.6(3) and (4) of the WLEP 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

*(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

## **2. Environmental Planning Instrument Details (Warringah LEP 2011)**

### **2.1 What is the name of the environmental planning instrument that applies to the land?**

Warringah Local Environmental Plan 2011

### **2.2 What is the zoning of the land?**

R2 Low Density Residential

### **2.3 What are the objectives of the zone?**

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

### **2.4 What is the development standard being varied?**

Clause 4.3 – Height of Buildings

**2.5 Under what clause is the development standard listed in the environmental planning instrument?**

Clause 4.3 – Height of Buildings of the Warringah LEP 2011

**2.6 What are the objectives of the development standard?**

*(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,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

**2.7 What is proposed numeric value of the development standard in the environmental planning instrument?**

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

**2.8 What is the numeric value of the development standard in your development application?**

The numeric value of the building height proposed is 9.2 metres

**2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?**

The development proposes a variation of 0.7 metres or 7.91%.

### 3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

#### 3.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

#### 3.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LE

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;

2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

### **3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7**

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

### **3.4 Zhang v City of Ryde**

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to *four2five*, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

### **3.5 Action Pty Ltd v Woollahra Municipal Council [2018]**



In *Action Pty Ltd v Woollahra Municipal Council*, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

## 4. Consideration

The following section addresses the provisions of clause 4.6 of the WLEP 2011 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

### 4.1 Five (5) Part Test - *Wehbe v Pittwater*

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The Objectives of the standard are:

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

#### Comment

The proposed alterations and additions to the building are appropriate to the site and will fit with the bulk and scale of the immediate locality. The variation is largely the result of the topography of the site and the existing excavated basement area. The majority of the development presents with a compliant building height to the street and neighbouring properties. The proposed height and built form are considered to be consistent with other approved dwelling houses in the locality, particularly No. 42 Griffin Road, located to the north of the site.

The proposed variation to the building height is 0.7 metres or 7.91%. The resulting built form is considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the non-compliance, with the variation largely attributed to the sloping topography of the site.

It is considered this objective is met, despite the numerical variation.

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

The proposed additions will have a minimal visual impact, with the majority of the development presenting with a compliant building height to the street and neighbouring

properties. The non-compliance will not result in any unreasonable view loss, loss of privacy or increase in shadowing for neighbouring properties.

The subject site and adjoining properties enjoy water views to the south east over Curl Curl Beach. The proposed development will result in some view loss from a bedroom at No. 42 Griffin Road, however the alterations and additions have been designed to retain the more significant view from the living room of No 42 Griffin Road. A view loss assessment is provided as Appendix 1.

Privacy will be retained for neighbours with ample setbacks and no direct overlooking into any key living areas. The proposed first floor terrace incorporates privacy screening to No. 42 Griffin Road and balustrading along both side boundaries.

Some negligible increase in shadowing will be experienced by No 38 Griffin Road as a result of the development. However, as described in the SoEE, this property cannot currently achieve complaint solar access and the proposed development will only result in a very minor increase to shadowing.

It is therefore considered this objective is met, despite the numerical variation.

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

The alterations and additions will result in a dwelling which will remain in character with its surrounds and the streetscape. The coastal locality will remain reflected in the character of the site and the scenic quality of the area will be positively contributed to as a result of the development proposed.

It is therefore considered this objective is met, despite the numerical variation.

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

The site and the development are not visible from any significant public places other than Griffin Road, from which it will be an attractive addition.

It is therefore considered this objective is met, despite the numerical variation.

- 2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

- 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason

- 4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

- 5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

#### **4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient grounds to permit the variation of the development standard. In particular:

- The proposed variation between the proposal and the building height control is just 0.7 metres or 7.91%,
- The proposed variation satisfies the objectives of the underlying intent of Clause 4.3, and therefore the merits of the proposal are considered to be worthy of approval. It has been demonstrated within Council and the Courts to apply a reasonable approach in supporting variations to development standards.
- Strict numerical compliance would not necessarily result in a materially better urban design outcome and would thwart the underlying objectives of the controls,
- The proposed development will result in a similar or lesser scale development than surrounding properties. It will not present with excessive bulk from the public domain due to the sloping topography of the site,
- The non-compliance will not result in any unreasonable view loss, loss of privacy or increase in shadowing for neighbouring properties
- The non-compliance is largely the result of considering the existing excavated basement area. The majority of the development presents with a compliant building height to the street and neighbouring properties.

- By supporting this variation to building height in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form,
- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone.
- The proposed variation adequately satisfies the underlying objectives of the controls and will not result in any unacceptable built, natural, social or economic impacts for consideration under the Act.

**4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

**Zone – R2 Low Density Residential**

**Objectives of zone**

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

Consistent. The proposal is for alterations and additions to an existing approved dual occupancy development.

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

Not relevant. The proposal is for alterations and additions to an existing dual occupancy.

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

It is considered the low-density character will be maintained as the non-compliance is largely the result of considering the existing excavated basement area. The majority of the development presents with a compliant building height to the street and neighbouring properties.

In addition, the landscaped setting on the site will be improved as a result of the development, with an increase in landscaping proposed on the Griffin Road frontage.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.



**4.4 Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**4.5 Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

**4.6 Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

**4.7 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

*(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

*(c) to promote the orderly and economic use and development of land,*

*(d) to promote the delivery and maintenance of affordable housing,*

*(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

*(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

*(g) to promote good design and amenity of the built environment,*

*(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

*(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

*(j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the 8.5 metre height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

## **Conclusion**

The proposed development is for alterations and additions to an existing dual occupancy on land zoned R2 – Low Density Residential.

As stated above the non-compliance between the proposal and the environmental planning instrument is 7.91% or 0.7 metres. However, the non-compliance is largely the result of considering the existing excavated basement area, with the majority of the development presenting with a compliant building height to the street and neighbouring properties.

The variation does not result in any unreasonable impacts in regards to view loss, loss of privacy or increase in shadowing for neighbouring properties and will result in a development of a similar or lesser scale development than surrounding properties.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.

## Appendix 3

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# THE COUNCIL OF THE SHIRE OF WARRINGAH

File No: PF 2006/40 RM.TA/1882D  
Enquiries:

Telephone: (02) 982 0333

CONSENT NO: 89/548

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

NOTICE TO APPLICANT OF DETERMINATION

OF A DEVELOPMENT APPLICATION

Applicant's Name and Address: C Galloway, 40 Griffin Road, North Curl Curl.

Being the applicant in respect of Development Application No. 1989/626.

Pursuant to section 92 of the Act, notice is hereby given of the determination by the Council of the Shire of Warringah, as the consent authority, of the Development Application No. 1989/626 relating to the land described as follows:-

Lot 15, DP 5963, No. 40 Griffin Road, North Curl Curl.

For the following development:-

Alterations and additions to existing house to create an attached dual occupancy.

The Development Application has been determined by granting of consent subject to the following conditions:-

1. Development being generally in accordance with plans unnumbered, dated 15.9.1989 (amended 28.1.1989), submitted 1.12.1989 as modified by any conditions of this Consent.
2. The colour, texture and substance of all external components of the building and hard surfaced areas being to Council's satisfaction, details to be included at building application stage.
3. Council cannot consent to the Strata Sub-division of the consented to dual occupancy.
4. Any alterations and/or additions to the dwelling to be constructed of materials matching or complementing the materials of the existing dwelling; the design of the conversions and additions is to harmonise with the architecture of the existing dwelling.

**CONSENT**

All correspondence to be addressed  
The General Manager,  
Civic Centre, Pittwater Road, Dee Why, 2099  
DX 9118 Dee Why Fax: (02) 982 4770



## THE COUNCIL OF THE SHIRE OF WARRINGAH

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5. Council will require a separate garbage service to be provided to each dwelling in the dual occupancy, and will charge for each service at the current rate.
6. Landscaping plans shall be submitted to Council together with any building application required, or where no building application is required, prior to the commencement of the development approved by this consent. The plans shall indicate all existing trees specifying those trees to be retained and those proposed to be removed. It shall specify details of proposed planting, including common and botanical names and height and spread at maturity. Such landscaping shall be designed and executed to Council's specification and shall be maintained in perpetuity to Council's satisfaction by the existing or future owners and occupiers of the property. Such landscaping shall be completed prior to the occupation of the building, or prior to the issue of a Building Certificate under Section 317AB of the Local Government Act, which ever occurs first. Furthermore, no tree or shrub of any kind whatsoever planted or retained pursuant to this consent shall be lopped, topped, pruned or removed without the prior written approval of the Council as a variation of this consent.
7. Restoration and maintenance to approved levels and safe condition of the footway reserve(s) adjoining the site Griffin Road to Council's reasonable satisfaction.
8. The public footways and roadways adjacent to the site shall be maintained at all times during the course of the work in a safe condition to the satisfaction of the Shire Engineer.
9. Provision of vehicle crossings, 1 crossing/s 5 metres wide, to the reasonable satisfaction of the Divisional Manager, Public Works and in accordance with Council Drawing No.A43330 to approved levels and specifications.
10. Construction of approved kerb laybacks in accordance with the details shown on Council Plan A4.2276.
11. Approval for the works required by conditions 9 & 10 of this consent shall be obtained by making an "Application for Street Levels" to Council's Public Works Division.

### CONSENT

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The General Manager,  
Civic Centre, Pittwater Road, Dee Why, 2099  
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12. Stormwater from the property being piped by gravitational means to Council's stormwater system and to the satisfaction of Council's engineer.
13. Walls between flats are to have a STC of 45. This wall is to be taken to the underside of the roof covering or ceilings to both flats are required to be 13mm firegrade plasterboard in accordance with Clause 16.12 of Ordinance 70. Details to be submitted with the Building Application.
14. The floor between the 4 car garage and the occupancy above shall be provided with a sound transmission class of 45 and a 13mm firegrade plasterboard ceiling. Details shall be submitted with the building application.
15. The wall between the occupancies shall be provided with a one hour fire resistance rating. Details shall be submitted with the building application.

The reason for the imposition of the above consent conditions is as follows:-

To ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act, pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 90 of the Act and the Environmental Planning Instrument applying to the land, as well as section 91(3) of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent 29 Dec 1989

**IMPORTANT:** You are advised to read these notes in addition to the Conditions of your consent.

- (1) It is to be clearly understood that the above consent is not an approval to carry out any structural work. A formal building application must be submitted to Council and be approved before any structural work is carried out to implement the above consent. Also the applicant is not relieved of any obligation to obtain any other approval required under any other Act.

## CONSENT

All correspondence to be addressed  
The General Manager,  
Civic Centre, Pittwater Road, Dee Why, 2099  
DX 9118 Dee Why Fax: (02) 982 4770





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- (2) Section 97 of the Environmental Planning and Assessment Act confers on the applicant who is not satisfied with the determination of the consent authority a right of appeal to the Land and Environment Court exercisable within 12 months of receipt of this notice.
- (3) This consent shall be effective and operative from the endorsement date of this consent; however should an appeal be lodged against Council's determination of the application, the consent shall cease to be, or shall not become, operative, until that appeal is determined. See section 93 of the Act.
- (4) For information about the circumstances in which this consent may lapse; about commencement of a development granted consent; about extension of the consent; and about the circumstances in which Council may require completion of the development, see Section 99 of the Act.
- (5) For information about the procedure for the modification of this consent by Council, see Section 102 of the Act.
- (6) Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning and Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

F L Thomson  
GENERAL MANAGER/  
SHIRE CLERK  
per .....

*Regina Sulle*

Date 29 DEC 2006

## CONSENT

All correspondence to be addressed  
The General Manager,  
Civic Centre, Pittwater Road, Dee Why, 2099  
DX 9118 Dee Why Fax: (02) 982 4770