

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0245
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 867 DP 595584, 11 Farnell Street CURL CURL NSW 2096
Proposed Development:	Modification of Development Consent DA2014/1321 granted for alterations and additions to an existing dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Maria Quinn David Andrew Quinn
Applicant:	Maria Quinn David Andrew Quinn

Application lodged:	21/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/05/2018 to 11/06/2018
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 867 DP 595584 , 11 Farnell Street CURL CURL NSW 2096
Detailed Site Description:	<p>The site is located on the western side of Farnell Street. It is irregularly shaped, and adjoins Gardere Avenue at the south western corner, where there is an existing driveway entry.</p> <p>The land slopes down from west to east, getting significantly steeper towards the eastern end of the site.</p> <p>The site presently accommodates a detached dwelling which is under construction (via DA2014/1321 and MOD2016/0017), with a separate two storey garage/outbuilding to the west of the dwelling. Surrounding development also consists of detached dwellings, with a mix of single, double and three storey dwellings.</p>

Map:



SITE HISTORY

DA2014/1321 - Alterations and additions to an existing dwelling lodged 15 December 2014.

Proposal involved the following:

Garage level

- New driveway and double garage / storeroom to the Farnell Street frontage.
- New elevator from rear of garage to upper levels
- New pedestrian entry and stairs
- Garden terracing above new garage

Ground level

- Internal reconfiguration with new external windows as required
- Extension to west by approximately 2m
- Extension of existing front balcony by approximately 1.3m
- Level will be comprised of rumpus, study, storeroom, 2 bedrooms, laundry and bathroom

First floor level

- Internal reconfiguration with new external windows as required
- Extension to west by approximately 2m
- Extension of existing front balcony up to 1.47m deep.
- Level will be comprised of primary living area, including dining and kitchen, bedroom and bathroom

Second floor level

- New upper floor level comprised of 3 bedrooms and two bathrooms

Other works

- Existing two level garage building to be converted to Cabana on bottom level, and billiards room on upper level.
- New swimming pool and terrace between dwelling and cabana/billiards building
- New single carport to the Gardere Avenue frontage.

Amended plans were received on 30 April 2015 during the assessment process which included lowering the height of the development, changes to the glazing of windows on the southern elevation, and increased the side setback of the new upper level in the south western corner of the dwelling.

Approval was granted on 21 July 2015 under delegation.

MOD2016/0017 - Modification to the approved alterations and additions to an existing dwelling consisting of the following:

- Change external cladding from horizontal to vertical
- Deleting ensuite window on the southern elevation
- Deleting window in the wardrobe on the northern elevation
- Existing external brickwork on the northern wall to be retained
- Deleting kitchen window on the southern elevation
- Retaining existing lounge room window on the southern elevation
- Retaining existing window on the lower level (rumpus) on the southern elevation
- Change roof colour to Windspray
- Alter roof pitch from west to east to north to south (Approved RL33.79 to Proposed RL33.78)
- Deleting zinc and retain render to the exterior of the pool cabana

Interior floor plan

- Relocate the ensuite from the northern side to the southern side (top floor)
- Relocate lift shaft from the southern to the northern side
- Relocate internal stairs and bedroom layout
- Raising the ceiling height of the garage (Approved RL21.93 to Proposed RL22.95)
- Relocate garage stairs from external to interior

Approval was granted to the approved subject to inclusion of the following conditions:

Condition 2A- Amendments to the approved plans to read as follows:

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

- All development is to be contained within the subject sites lot boundaries.
- No approval is given to any works to the garage (with the exception of relocation of the stairs and the lift to the northern portion of the garage). This also includes the proposed works above the garage including a new terrace and raised garage ceiling height. The maximum height of the garage roof is to be no higher than RL20.53 as per the approved plan DA-11 (Issue B) dated 30 April 2015 via DA2014/1321.
- The lower floor level is to be used only for storage.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: Ensuring development minimises unreasonable impacts in accordance with WLEP2011 and WDCP and current legal proceedings. (DACPLB02)

Condition 15A - Window modifications to read as follows:

Window G3 (Storeroom) as shown on the approved plans is to either have a minimum sill height of 1.5m above the finished floor level, or be constructed with obscure glazing to a minimum height of 1.5m above the finished floor level.

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

Reason: In order to maintain privacy to the adjoining properties. (DACPLC06)

Condition 19A - Sub-soil drainage

The installation of suitable sub-soil seepage drainage shall be installed between the dwelling and southern boundary and discharged directly to Council's nearest stormwater drainage line being Farnell Street and is to be carried out in accordance with relevant Australian Standards.

(Note: At the time of determination the following (but not limited to) Standards applied:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

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

Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications to the approved development include the following:-

- Deletion of the spiral staircase;
- Relocation of the 90mm by 90mm RHS Posts and 90mm by 200mm RHR Posts on the middle deck out by 500mm and 800mm on the lower level;
- Include storeroom on the plan;
- Include door to the lift on the terrace level with sidelight.
- Reinstatement of garage entry door;
- Access stairs from the lower terrace to the garage roof terrace;
- Extension of the terrace to the southern boundary; and
- Reinstatement of the brick wall in the storeroom

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 DA2014/1321, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2014/1321 and MOD2016/0017.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and

Section 4.15(1A) - Other Modifications	Comments
(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	Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was received on 6 December 2018.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Public Exhibition” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Hopkins John	9 Farnell Street CURL CURL NSW 2096
Sally Jean Hopkins	9 A Gardere Avenue CURL CURL NSW 2096
Mr John James Hopkins	9 A Gardere Avenue CURL CURL NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- Illegal works;
- Land and Environment Court orders;
- Correct location of the north and south boundaries and the actual setbacks of the building works - lower terrace;
- Stormwater management required a drainage pit, drainage works have still not been completed in accordance with the plans and construction certificate in breach of DA Consent condition No. 26 and installing drainage works upon No. 9 Farnell Street in breach of previous conditions confining works within the boundaries of No. 11 Farnell (also in breach of Court Orders);
- Sub floor rooms (levels and excavation);
- Bulk and scale of the resultant development (10+ metre high walls at 900mm setback);
- Balcony and supporting structures;
- Front Boundary Setback;
- Privacy and amenity;
- Views;
- Visual impacts;
- Works within the road reserve (Farnell Street)
- Failing to obscure glazing to window G3; and

The matters raised within the submissions are addressed as follows:

- Illegal works

Comment: The proposed (current) modification seeks retrospective consideration and approval for works undertaken at No. 11 Farnell Street. Under the legislation requirements of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) via Section 4.55 Council may consider retrospective works. It is correctly identified by Mr Hopkins (No. 9 Farnell Street) that these works can not be approved under the current Construction Certificate (CC) and these retrospective works (if approved) would need to be approved via a Building Certificate (BC).

Given the above an assessment of this current modification will be completed by Council as requested by the applicant/owner (Quinn's) of No. 11 Farnell Street and the issues raised within the two (2) submissions from (Hopkins) of No. 9 Farnell Street will be investigated, assessed and determined within this assessment.

- Correct location of the north and south boundaries and the actual setbacks of the building works - lower terrace

Comment: Issues were raised by the Hopkins in relation to the true location of the boundaries, in particular the southern side boundary between both parties. Amended plans and Statement of Environmental Effects (SEE) for this current modification were received from the Quinns on 6 December 2018 after a number of requests from Council's Planner. The plans demonstrate the

side boundary between Nos. 9 & 11 Farnell Street, which is 75mm from the northern face of the brick boundary wall (located wholly on 9 Farnell Street).

It is noted on 19 February 2016 the New South Wales Land and Property Information made a determination of the common side boundary between the subject site (11 Farnell Street) and the adjoining property to the south (9 Farnell Street). It was established from this determination that the existing brick fence between the properties is 0.075m south of the side boundary between the two properties. It was also established that the dwelling at 11 Farnell Street was 0.9m away from this boundary at the southwest corner and 0.91m away at the southeast corner, which remains compliant with the side setback control of the Warringah Development Control Plan 2011 (WDCP 2011).

An onsite inspection was completed on 14 January 2019 where measurements were undertaken on the lower terrace. It is noted that the owner has clearly constructed the terrace with a clearance from the wall of over 0.09m (0.015m off the boundary). Issues were also raised by Mr Hopkins about the previous approval (MOD2016/0017) and the terrace. A review was completed of the assessment report and conditions and it was noted that the applicant requested raising the height of the garage roof and add a terrace to this area (above the garage).

The terrace as part of this assessment is the adjacent to the subfloor area not the area directly above the garage as proposed in the previous modification (MOD2016/0017).

It is considered that issue has been addressed and does not warrant refusal and/or further amendment via condition(s).

- Subfloor rooms and excavation

Comment: Issues were raised in relation to the excavation of the subfloor area at the front of the dwelling (Farnell Street frontage). This subfloor area is below natural ground level and a review of the plans from the previous applications (MOD2016/0017) and (DA2014/1321) are generally consistent when viewed externally.

It is noted that this area is still conditioned to be used for storage and therefore not included as a habitable area as per Condition 2A - Amendments to the approved plans to read as follows:-

"The lower floor level is to be used only for storage."

Given the above it is considered that this issue does not warrant refusal and/or further condition (s).

- Front Boundary Setback

Comment: Issues were raised in relation to the location of the southeastern post that supports the ground floor balcony. Measurements both in the field and off the amended plans established the setback of post is 6.75m from the front boundary and 1.045m from the south boundary. It is noted that the architectural plans may demonstrate this distance to be within the 6.5m front setback, a condition will be added to ensure that the posts are at or behind the required 6.5m front boundary setback in accordance with the Warringah Development Control Plan 2011.

Given the above it is considered that this issue does not warrant refusal and a condition will ensure compliance.

- Views

Comment: Please refer to Part D7 Views of WDCP 2011. In short, the proposed modifications have minimal impacts on the current views from No. 9 Farnell Street.

Given the above it is considered that this issue does not warrant refusal and/or further condition (s).

- Visual impacts

Comment: Issues raised the lower balcony and supporting structures create unnecessary visual impacts. It is considered that these support structures (posts) do not create a visual impact that warrant their removal and/or be screened as this would add more visual bulk and created potential loss of views to No. 9 Farnell Street over their northern side boundary.

Given the above it is considered that this issue does not warrant refusal and/or further condition (s).

- Failing to obscure glazing to window G3;

Comment: Issues were raised within the previous modification (MOD2016/0017) in relation to privacy. A condition was added via this assessment as follows:-

"Condition 15A - Window modifications to read as follows:

Window G3 (Storeroom) as shown on the approved plans is to either have a minimum sill height of 1.5m above the finished floor level, or be constructed with obscure glazing to a minimum height of 1.5m above the finished floor level."

It is noted that a Interim Occupation Certificate has been issued and all works will need to be completed prior to the issuing on the Final Occupation Certificate including compliance with this condition.

Given the above it is considered that this issue does not warrant refusal and/or further condition (s).

- Stormwater management required a drainage pit, drainage works have still not been completed in accordance with the plans and construction certificate in breach of DA Consent condition No. 26 and installing drainage works upon No. 9 Farnell Street in breach of previous conditions confining works within the boundries of No. 11 Farnell (also in breach of Court Orders);

Comment: This current application has no modifications to the stormwater management on site. Any works which are to be completed are to be installed in accordance with the original consent DA2014/1321, MOD2016/0017 and [2018] NSWLEC 117 decision dated 8 August 2018 before Commissioner Moore.

Given the above it is considered that this issue does not warrant refusal and/or further condition (s).

- Privacy and amenity;

Comment: Issues were raised from the owners of 9 Farnell Street about privacy and amenity in relation to the retrospective works (terrace). A review of the previous approved modification (MOD2016/0017) demonstrated a lawn terrace on southern part and paving linking up with the stairs along the northern boundary which had a RL22.57. The completed terrace is actually lower in level at RL22.18, which is 0.39m (lower) than the previous approval. The existing boundary wall (located wholly on 9 Farnell Street) measures 1.65m above the level of the terrace. The concreted terrace portion will act as a pathway linking the northern and southern pathways around the dwelling at 11 Farnell Street and therefore it is considered the issues of privacy and amenity are considered to be low/minimal.

Additionally, it is noted both 9 and 11 Farnell Street are quite visible to Farnell Street given their elevated location to the public from the public domain and surrounding properties which are with the vicinity.

Given the above it is considered that this issue does not warrant refusal and/or further condition (s).

- Bulk and scale of the resultant development (10+ metre high walls at 900mm setback)

Comment: The proposed modifications are considered to be generally minor in nature. It is noted that there is a minor reduction in the landscape open space and this will be addressed within this report. The issues of bulk and scale have been previously addressed within MOD2016/0017.

Given the above it is considered that the proposed modification ensures compliance with Part D9 Building Bulk and this issue raised does not warrant refusal and/or further amendment of the proposal.

- Land and Environment Court orders;

Comment: A number of court cases have occurred between the Quinn's and Hopkins since 2016 as follows: -

Hopkins v Quinn [2016] NSWLEC 163 - Class 4 proceedings before Senior Commissioner Moore

Lodged by John James Hopkins (Encroachment works by the Quinns) after the boundary between Nos. 9 & 11 Farnell Street was established by the Land and Property Information for a determination of the boundary between the two (2) properties. The boundary is located 75mm to the north of the northern face of the brick wall built on the Hopkins' property (9 Farnell Street).

"Outcomes:

- (1) *The proposal to require demolition of the wall is rejected;*
- (2) *Noting that Mr Eastman, on instructions from Mrs Hopkins, has advised the Court that she grants owner's consent to the construction of an overland stormwater flow path extending from the north face of the wall on the Hopkins' property to the southern face of the house on the Quinns' property, the overland flow path is to be constructed by the Quinns in accordance with the design proposed by Dr Martens to a detention basis constructed to the full width of the gap between the two walls at the rear of the present garage space retaining wall at the western end of the garage space on the Quinns' property;*
- (3) *Construction in (2) is to be by appropriately qualified tradespersons and not by Mr Quinn;*
and
- (4) *An order that Mr and Mrs Quinn are required to abide by the terms and the conditions of the*

development consent."

Hopkins v Quinn [2017] NSWLEC 31 -Class 4 proceedings before Senior Commissioner Moore

"Application to reopen - application seeking to revisit aspects of each four elements determined in principal decision – application to reopen concerning one element refused but granted concerning three elements – principal decision confirmed with respect to one reopened matter – principal decision varied in minor aspects with respect to two reopened matters – directions for parties to settle orders to reflect principal decision – if costs not agreed, costs reserved"

"The application for leave to reopen related to matters dealt with in my December 2016 decision concerning the four separate sections into which the east-west running boundary dividing the two properties could be notionally separated for the purposes of the issues engaged. Those different sections of the length of the boundary between the two properties can be identified, in summary terms, from east to west along the boundary, as:

- (1) The shotcrete wall section;*
- (2) The drainage corridor adjacent to the Quinns' dwelling;*
- (3) The boundary portion incorporating the garden bed to the south of the Quinn's swimming pool; and*
- (4) The cabana constructed at the western end of the Quinn's property.*

Conclusion:

- (1) There is to be no change to my original determination concerning the extent of the easement necessary over the Hopkins' property for the pinning of the shotcrete wall (either as to its horizontal intrusion into Mrs Hopkins' property or to its triple valuation); and,*
- (2) With respect to the two easement elements to the west, I accept that it is appropriate to vary my original conclusion with respect to them, resulting in minor calculation adjustments of the nature set out in the body of this decision."*

Hopkins v Quinn (No 2) [2017] NSWLEC 76 Class 4 proceedings (Costs) before Senior Commissioner Moore

136. *"I was, as I indicated in my comment at the end of my second decision, disposed to order that the Quinns pay only 75% of Mr Hopkins' costs of this phase of the proceedings.*
137. *Taking into account the two significant failures by the Quinns on their reopening application, and balancing them against the comparatively modest success they obtained with respect to the other two elements of the reopening phase of the proceedings, I remain of the view that the appropriate order concerning the reopening phase of the proceedings is that the Quinns should pay 75% of Mr Hopkins' costs of this phase."*

Hopkins v Quinn (No 3) [2017] NSWLEC 101

"The First and Second Respondents have breached conditions 2 and 3(a) of development consent granted to DA2014/1321 issued by Warringah Council and dated 21 July 2015 (Consent).

Hopkins v Quinn [2018] NSWLEC 117 (Drainage works)

"On 28 November 2017, Mr Hopkins commenced fresh Class 4 civil enforcement proceedings against the Quinns. As those proceedings were also commenced prior to

the renumbering and reordering of provisions of the EP&A Act, as earlier noted, it remains appropriate for these proceedings, also, to refer to relevant provisions of the EP&A Act on the basis of the earlier numbering system.

In essence, Mr Hopkins now alleges that various elements of work undertaken for the Quinns in the area to the north of Mrs Hopkins' wall were works which were carried out otherwise than in accordance with the Court orders made in the final orders proceedings and/or were carried out on Mrs Hopkins' land without her consent for the undertaking of those works.

The relief sought by Mr Hopkins can be seen from the extract below:

1 An order that the Respondents, including their agents and servants, remove:

(a) The PVC stormwater pipe draining the central trench grate on the overland flow path that currently sits within the boundary of the land known as 9 Farnell Street, Curl Curl ('No. 9'); and

(b) Any other drainage works located on No. 9 in the area referred to in order 1(a);

within 7 days of the date of this order.

2 An order that, until further order, the Respondents, including their agents and servants, be restrained from constructing the garage at their premises known as 11 Farnell Street, Curl Curl ('No. 11'), unless or until they comply with the directions made by Dr Daniel Martens on 6 October 2017 and 31 October 2017 ('the Directions').

3 An order that the Respondents, including their agents and servants, comply with any such order or further direction as may be issued by Dr Martens.

The Summons also sought that the Quinns be ordered to pay Mr Hopkins' costs."

"The Summons is dismissed; and

The Respondents are to pay the Applicant's costs up to and including 26 April 2018, as agreed or assessed, and, from 27 April 2018, the Applicant is to pay the Respondents' costs, as agreed or assessed."

The works as proposed by this modification have minimal impacts on adjoining and surrounding properties. It is considered that Council has assessed this current application under the Section 4.55 of the Environmental Planning and Assessment Act 1979. Additionally there are no works within easement (i.e. 75mm easement from the northern face of the wall located on 9 Farnell Street).

Given the above it is considered that the issue has been reviewed and does not warrant refusal of this application subject to recommended conditions.

- Works within the road reserve (Farnell Street)

Comments: "Additionally DA Consent required "No works are permitted on the Council Road reserve other than the approved driveway works." Look at the garden bed retaining structures built on Council land on Farnell Street as excavation was not in accordance with Council or

engineering requirements."

An application has been lodged by the applicant/owner (S138a 2018/0041) in relation to these works - retaining walls along the side of the driveway on Council land. The application is still under assessment by Council's Roads and Assets Department.

MEDIATION

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

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local 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	10m	7.7m (Posts)	N/A	Unchanged

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	9.7m	3.9m	Compliant

			(Store room)	
B3 Side Boundary Envelope	5m	Outside envelope	Outside envelope	Unchanged
	5m	Outside envelope	Outside envelope	Unchanged
B5 Side Boundary Setbacks	North - 0.9m	Dwelling 910mm Garage Nil	Dwelling 910mm Garage Nil	Unchanged
	South - 0.9m	Dwelling 910mm Pool Building Nil (existing and unchanged) Garage Nil Pool and decking nil	Dwelling 900mm (southwest) Pool Building Nil (existing and unchanged) Garage Nil Pool and decking nil	Unchanged*
	West - 0.9m	Carport 600mm	N/A	Unchanged
B7 Front Boundary Setbacks	Primary (Farnell Street) 6.5m	Garage Nil Dwelling 6.5m	Garage Nil Dwelling 6.5m	Unchanged
	Secondary (Gardere Avenue) 3.5m	Carport 1m	N/A	Unchanged
D1 Landscaped Open Space and Bushland Setting	40% (202sqm)	20.7% (104.5sqm)	20.4% (102.9sqm)	No

* 0.095m side setback to terrace (Screens or sunblinds, light fittings, electricity or gas meters, or other services infrastructure and structure not more than 1 metre above ground level (existing) such as **unroofed terraces**, balconies, landings, steps or ramps may encroach beyond the minimum side setback.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposed landscaped open space will be 102.9sqm (20.4%) which is a minor reduction on the previous approved landscaping of 104.5sqm (20.7%), a reduction of 1.66sqm (0.3%).

Merit consideration

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

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

Comment: The proposed areas of landscaping will enable planting to be maintained and enhance the existing streetscape of Farnell Street ensuring compliance with this merit consideration.

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

Comment: The proposed development maintains some trees and shrubs ensuring habitat for wildlife. Combined with the new plantings on the site it is considered that the proposal satisfies this merit consideration.

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

to mitigate the height, bulk and scale of the building.

Comment: The proposed areas of landscaping open space will be of a sufficient areas to establish adequate areas of shrubs and trees to mitigate the height, bulk and scale of the dwelling ensuring compliance with merit consideration.

- *To enhance privacy between buildings.*

Comment: The proposed landscaping will ensure reasonable levels of privacy between dwellings ensuring compliance with this merit consideration.

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

Comment: The rear yard will accommodate appropriate outdoor recreational opportunities that will meet the needs of the occupants ensuring compliance this this merit consideration.

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

Comment: There sufficient areas for service functions, including clothes drying ensuring compliance with this merit consideration.

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

Comment: The site will have ample permeable areas to facilitate water management to ensure compliance with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is

more valuable than one in which it is obscured".

Comment to Principle 1:

The main view from 9A Farnell Street is achieved over the front eastern boundary which consists of ocean and interface with the land/beach with the ocean. The view to the northeast is over a side boundary and incorporates views of the North Curl Curl Headland and views of the ocean and interface of the land/beach with the ocean. Similarly the view to the southeast incorporates views of the ocean and interface of the land/beach with the ocean.

The view directly to the north over the northern side boundary from 9A Farnell Street incorporates views of the reserves/parkland/lagoon and district views.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

As stated above the views of the ocean over the front eastern boundary are the primary view. The posts for the balconies are considered not to dramatically affect the views over the side boundary which is considered a secondary views.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

The view loss is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. 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. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The proposed modifications are considered have minimal impacts on views. The variation to the landscaping will not has no significant impact on the current views enjoyed from 9 Farnell Street.

Given the above it is considered that view sharing is reasonable/acceptable.

- *To encourage innovative design solutions to improve the urban environment.*

Comment: It is considered that the minor modificatons to development demonstrates good innovation, articulation and has been planned to consider the privacy of the owner/occupants of the development and the adjoining residences/occupants at No. 9 Farnell Street.

It is considered the development satisfies this merit consideration.

- *To ensure existing canopy trees have priority over views.*

Comment: Existing canopy trees within the vicinity will be maintained ensuring compliance with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in 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

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

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. Mod2018/0245 for Modification of Development Consent DA2014/1321 granted for alterations and additions to an existing dwelling on land at Lot 867 DP 595584, 11 Farnell Street, CURL CURL, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S96 - 01	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-02	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-03	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-04	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-05	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-06	27 November	Howard K Smith & Associates

	2018	Pty Ltd.
S96-07	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-08	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-09	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-10	27 November 2018	Howard K Smith & Associates Pty Ltd.
S96-11	27 November 2018	Howard K Smith & Associates Pty Ltd.

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

c) The proposed door to the lift on the terrace level with sidelight is to be deleted.

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

B. Add Condition 1B - Front setback of posts to read as follows:

The posts for the balconies are to maintain a minimum setback of 6.5m measured from the front eastern boundary.

Reason: Compliance with Clause B7 Front Boundary Setbacks of Warringah Development Control Plan 2011.

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

Signed



Phil Lane, Principal Planner

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



Steven Findlay, Manager Development Assessments