

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                            |              |
|----------------------------|--------------|
| <b>Application Number:</b> | Mod2015/0203 |
|----------------------------|--------------|

|                                           |                                                                                                                                                                                  |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Responsible Officer:</b>               | Alex Keller                                                                                                                                                                      |
| <b>Land to be developed (Address):</b>    | Lot A DP 354680 , 27 Brighton Street CURL CURL NSW 2096                                                                                                                          |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2006/0960 granted for upper storey addition alterations and additions to the existing dwelling double garage swimming pool and front fence |
| <b>Zoning:</b>                            | LEP - Land zoned R2 Low Density Residential                                                                                                                                      |
| <b>Development Permissible:</b>           | Yes                                                                                                                                                                              |
| <b>Existing Use Rights:</b>               | No                                                                                                                                                                               |
| <b>Consent Authority:</b>                 | Warringah Council                                                                                                                                                                |
| <b>Land and Environment Court Action:</b> | No                                                                                                                                                                               |
| <b>Owner:</b>                             | Mary Anne Whitehead                                                                                                                                                              |
| <b>Applicant:</b>                         | Richard John Whitehead                                                                                                                                                           |

|                                  |                                               |
|----------------------------------|-----------------------------------------------|
| <b>Application lodged:</b>       | 08/09/2015                                    |
| <b>Application Type:</b>         | Local                                         |
| <b>State Reporting Category:</b> | Other                                         |
| <b>Notified:</b>                 | 15/09/2015 to 30/09/2015                      |
| <b>Advertised:</b>               | Not Advertised in accordance with A.7 of WDCP |
| <b>Submissions:</b>              | 0                                             |
| <b>Recommendation:</b>           | Approval                                      |

### ASSESSMENT INTRODUCTION

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

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

### SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot A DP 354680 , 27 Brighton Street CURL CURL NSW 2096                                                                                                                                                                                                                                                                                   |
| <b>Detailed Site Description:</b> | <p>The site is generally regular in shape with frontage to Brighton Street. The subject site has area of approximately 696.5 sqm. The site currently contains a two storey dwelling with a swimming pool in the rear garden.</p> <p>Surrounding development consists of low density detached dwelling houses in a landscaped setting.</p> |

Map:



## SITE HISTORY

**Development Application No.2006/0960** for a alterations and additions involving upper storey additions , a new double garage, swimming pool and front fence, was approved by Council on 17 December 2006. The works have been substantially completed however a "final occupation certificate" has not been issued.

## PROPOSED DEVELOPMENT IN DETAIL

The modification of consent involves the following changes to the approved plans:

- Deletion of the spa; and
- Adjustment to the coping area around the pool; and
- Minor change to the position of the pool for the side setback and rear setback; and
- Minor change to landscaping setback (however maintaining the net landscaping for the property).

NOTE: The changes have already been made as the pool is completed and in use.

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

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2006/0960, in full, with amendments detailed and assessed as follows:

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

| <b>Section 96(1A) - Other Modifications</b>                                                                                                                                                                                                                                                                                                                                       | <b>Comments</b>                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:                                                                                                                                               |                                                                                                                                                                                                                                                         |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and                                                                                                                                                                                                                                                                                        | <b>Yes</b><br>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 DA2006/0960                                                                        |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require,<br><br>or<br><br>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan. |
| (d) it has considered any submissions made                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                         |

| Section 96(1A) - Other Modifications                                                                                                                  | Comments                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | No submissions were received in relation to this modification application. |

### Section 79C Assessment

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

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

| Section 79C 'Matters for Consideration'                                                                                  | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 79C (1) (a)(i) – Provisions of any environmental planning instrument                                             | See discussion on “Environmental Planning Instruments” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Section 79C (1) (a)(iii) – Provisions of any development control plan                                                    | Warringah Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Section 79C (1) (a)(iiia) – Provisions of any planning agreement                                                         | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> |

| Section 79C 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                   | Clause 98 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.                                                                                                                                                                                                                                                                                                            |
| Section 79C (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 | (i) 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.<br>(ii) The proposed modification of the development will not have a detrimental social impact in the locality considering the character of the proposal.<br>(iii) The proposed modification of the development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. |
| Section 79C (1) (c) – the suitability of the site for the development                                                                                                             | The site is considered suitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs                                                                                             | See discussion on “Public Exhibition” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Section 79C (1) (e) – the public interest                                                                                                                                         | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.                                                                                                                                                                                                                                                                                                                                                                                                         |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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

## MEDIATION

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

## REFERRALS

| External Referral Body | Comments                                                                                                                                                                                                                 |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | The modification to 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)**

Nil

### **Warringah Local Environment Plan 2011**

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

### Principal Development Standards

| Development Standard          | Requirement             | Approved  | Proposed  | % Variation | Complies |
|-------------------------------|-------------------------|-----------|-----------|-------------|----------|
| Minimum subdivision lot size: | 450 square metres (sqm) | 696.5 sqm | No change | N/A         | Yes      |
| Height of Buildings:          | 8.5 metres (m)          | 7.7m      | No change | N/A         | Yes      |

### Compliance Assessment

| Clause                               | Compliance with Requirements |
|--------------------------------------|------------------------------|
| 5.3 Development near zone boundaries | 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             | 6.4m     | No change | Yes      |
| B3 Side Boundary Envelope (East) | 45 degrees at 5m | Complies | No change | Yes      |
| B3 Side Boundary Envelope (West) | 45 degrees at 5m | Complies | No change | Yes      |
| B5 Side Boundary Setbacks        | 0.9m             | 0.9m     | No change | Yes      |
|                                  | 0.9m             | 0.9m     | No change | Yes      |
| B7 Front Boundary Setbacks       | 6.5m             | 6.5m     | No change | Yes      |

|                                               |                 |                                                           |                                              |                                                 |
|-----------------------------------------------|-----------------|-----------------------------------------------------------|----------------------------------------------|-------------------------------------------------|
| B9 Rear Boundary Setbacks                     | 6m              | 12.5m<br>(Rear deck)<br><br>1.0m<br>(Pool coping setback) | No change to dwelling<br>0.0m<br>Pool coping | Yes<br><br>Yes<br>(50% setback area maintained) |
| D1 Landscaped Open Space and Bushland Setting | 40%<br>(478sqm) | 40%                                                       | 41% (285sqm)<br>(Spa & coping deleted)       | Yes                                             |

### Compliance Assessment

| Clause                                        | Compliance with Requirements | Consistency Aims/Objectives |
|-----------------------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                                | Yes                          | Yes                         |
| C4 Stormwater                                 | Yes                          | Yes                         |
| C5 Erosion and Sedimentation                  | Yes                          | Yes                         |
| C7 Excavation and Landfill                    | Yes                          | Yes                         |
| C8 Demolition and Construction                | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting | Yes                          | Yes                         |
| D2 Private Open Space                         | Yes                          | Yes                         |
| D8 Privacy                                    | Yes                          | Yes                         |
| D16 Swimming Pools and Spa Pools              | Yes                          | Yes                         |
| E1 Private Property Tree Management           | Yes                          | Yes                         |

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

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

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

Section 94 contributions were levied on the Development Application.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant 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 Modification Application No. Mod2015/0203 for Modification of Development Consent DA2006/0960 granted for upper storey addition alterations and additions to the existing dwelling double garage swimming pool and front fence on land at Lot A DP 354680, 27 Brighton 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                               |
| 28997-S1 Swimming Pool Structural Details           | 7 August 2013    | Jack Hodgson Consultants                  |
| DA03B Landscape Plan & Shadow Study                 | 13 November 2006 | Bennett Architects & Associates Pty. Ltd. |

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

#### c) The development is to be undertaken generally in accordance with the following:

| Landscape Plans |
|-----------------|
|                 |



| Drawing No.                                                                | Dated    | Prepared By                     |
|----------------------------------------------------------------------------|----------|---------------------------------|
| DA03B Landscape Plan (as amended per Modification plans received 8/9/2015) | 13/11/06 | Bennett Architects & Associates |

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

**B. Modify Condition No.3 "Compliance with notation in red on the plans" to read as follows:**

**3. Compliance with notation in red on the plans:**

(1) **Privacy Screen:** A fixed privacy-screening device to a height of 1.8 m above the finished floor level must be provided on the eastern side of the proposed balcony off the first floor main bedroom, as noted in red on the plans. Amended plans demonstrating compliance with these conditions must be submitted with the Construction Certificate.

(2) [Deleted].

Reason: To ensure that adequate visual privacy and amenity is maintained to the neighbouring property

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

**Signed**

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**Alex Keller, Senior Development Planner**

The application is determined under the delegated authority of:

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**Phil Lane, Development Assessment Manager**

**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

| <b>Notification Document</b>                                                                  | <b>Title</b>     | <b>Date</b> |
|-----------------------------------------------------------------------------------------------|------------------|-------------|
|  2015/272532 | Notification map | 15/09/2015  |

**ATTACHMENT C**

| <b>Reference Number</b>                                                                        | <b>Document</b>                                                                                               | <b>Date</b> |
|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-------------|
|  MOD2015/0203 | 27 Brighton Street CURL CURL NSW 2096 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact | 08/09/2015  |
|  2015/265074  | DA Acknowledgement Letter - Richard John Whitehead                                                            | 08/09/2015  |
|  2015/268336  | Modification Application Form                                                                                 | 10/09/2015  |
|  2015/268340  | Applicant Details                                                                                             | 10/09/2015  |
|  2015/268347  | Report Statement of Environmental Effects                                                                     | 10/09/2015  |
|  2015/268394  | Plans External Layout                                                                                         | 10/09/2015  |
|  2015/268398  | Plans Master Set                                                                                              | 10/09/2015  |
|  2015/271252  | File Cover                                                                                                    | 14/09/2015  |
|  2015/271263  | Referral to AUSGRID - SEPP - Infrastructure 2007                                                              | 14/09/2015  |
|  2015/272529  | Notification letter 13                                                                                        | 15/09/2015  |
|  2015/272532  | Notification map                                                                                              | 15/09/2015  |