

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2013/0031
Responsible Officer	Mitchell Drake
Land to be developed (Address):	Lot 25 DP 14040 , 38 Carrington Parade CURL CURL NSW 2096
Proposed Development:	Modification of Development Consent DA2011/0979 granted for Demolition of an existing house and construction of a new dwelling
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	David William Jones Katherine Mary Jones
Applicant:	Gartner Trovato Architects
Application lodged:	22/02/2013
Application Type	Local
State Reporting Category	Residential - Other
Notified:	28/02/2013 to 15/03/2013
Advertised	Not Advertised in accordance with A.7 of WDCP
Submissions	0

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

Environmental Planning and Assessment Act 1979 - Section 96(1A) -
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D2 Private Open Space

RECOMMENDATION

Approval

SITE DESCRIPTION

Property Description:	Lot 25 DP 14040 , 38 Carrington Parade CURL CURL NSW 2096
Detailed Site Description:	The site is legally known as Lot 25, DP14040, and commonly referred to as 38 Carrington Parade Curl Curl. The site is generally regular in shape with an average depth of 34.75m and a site width of 13.41m equating to an overall site area of 463.1sqm. The site features a slope of 20% from south to north across the depth of the site. The site is currently occupied by a single detached dwelling with an internal double garage and landscaping. Vehicle and pedestrian access is from both Carrington Parade on the primary frontage and Beach Street at the secondary frontage.

Map:



SITE HISTORY

The following applications are relevant to the proposal to modify:

- DA2011/0979 - Demolition Works and Construction of a Dwelling House, granted development consent on 28 September 2011,
- MOD2012/0168 - Modification of Development Consent DA2011/0979 granted development consent on 18 September 2012.

No other applications or proposals are relevant to the application.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks approval to modify Development Consent DA2011/0979 by providing an additional 2 parking spaces within the primary front setback of the site, off Carrington Parade. Additionally, the applicant seeks to delete condition 18 which requires the re-enstatement of the curb in Carrington Parade, in order to maintain the existing gutter crossing.

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 DA2011/0797, 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:

Section 96(1A)	Comments
Section 96(1A) (a) – Is the Modification to Consent of Minimal Environmental Impact?	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
Section 96(1A) (b) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was	Yes The modification, as proposed in this application, would result in a development which is substantially the same as that

previously modified?	approved in the original Notice of Determination.
Section 96(1A) (c) & (d) – Public Exhibition of subject application / submission	The application was notified under the provisions Clause 90(1) of the EP&A Regulations 2000.
Section 96 (3) - Consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application	See discussion on “Matters for Consideration under Section 79C” in this report.

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)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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 of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This Clause is not relevant to this application to modify consent. <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. No Additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via the original conditions of

Section 79C 'Matters for Consideration'	Comments
	consent <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This Clause is not relevant to this application to modify consent. <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 of consent/This Clause is not relevant to this application to modify consent. <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 of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This Clause is not relevant to this application to modify 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. (ii) The proposed development will / will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will / 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 un/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

Internal Referral Body	Comments
Development Engineers	The proposal was referred to Councils Development Engineers who made the following comments: <i>"In discussions with Council's Development Assessment Officer, Development Engineers have reviewed the proposed modification and wish to advise the following:</i> <i>Council's policy permits a vehicle crossing to be provided to an off-street parking space (where approved) per road frontage. Furthermore, multiple driveways are permitted to car parking spaces where a property has more than one road frontage. Approval of such off-street parking spaces are subject to compliance with Council's planning controls and requirements.</i> <i>In this regard, provided the proposed car parking spaces are assessed and approved under Council's planning controls and requirements, Development Engineers have no objections to the deletion of condition 18 of the Development Consent to retain the existing vehicle crossing in Carrington Parade.</i> <i>Please note where off-street parking spaces are approved, the off-street parking spaces are considered impervious irrespective of the wearing surface of the parking spaces, as the base course below the wearing surface would be subject to traffic loads and compacted to an extent that prevents water seeping through the base course. "</i> Notwithstanding the comments above, a full assessment of the proposal has indicated that whilst the hardstand proposed on the subject site is not appropriate and is not supported, the retaining of the existing gutter crossing results in little planning impacts. The existing entry and exit on Carrington Parade would not be altered by the proposal and thus the existing functionality of the crossing is not altered. The retaining of the guttercrossing is supported in this regard.
Natural Environment (Biodiversity)	No comments or conditions

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate was submitted with the original application. A condition was included within the original recommendation for DA2011/0979 requiring compliance with the commitments indicated in the BASIX Certificate. The modification has no impact upon the provisions of the BASIX certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The application to modify was referred to Ausgrid who did not raise any objection to the proposal.

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

There are no changes to the Principle Development Standards proposed.

Compliance Assessment

Clause	Compliance with Requirements
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Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
Side Boundary Setbacks East (Carpark)	0.9m	N/A	1 m	Yes
Side Boundary Setbacks West (Carpark)	0.9m	N/A	3.5m	Yes
Primary Front Boundary Setbacks	6.5m	9.6m	1m	No - Not Supported
Landscaped Open Space and Bushland Setting	40% (185.24sqm)	38% (178.23sqm)	29% (134.5sqm)	No - Not Supported

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
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
Front Boundary Exceptions - R2	No	Yes
B9 Rear Boundary Setbacks	N/A	N/A
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	No	No

Detailed Assessment

B7 Front Boundary Setbacks

The Clause states that:

"Where primary and secondary setbacks are specified, buildings and structures (such as carparks) are not to occupy more than 50% of the area between the primary and secondary setbacks."

A review of the plans indicates that the proposed carpark area occupies 62% (36sqm) of the primary

front setback. The proposed hardstand is not supported in this regard.

The existing gutter crossing has no impact upon the front building setback and may be retained.

C2 Traffic, Access and Safety

The retaining of the existing gutter crossing and the provision of the hardstand on Carrington Parade will not result in any changes to on-street parking. Entry and exit at the gutter crossing will remain as existing in terms of sight lines, pedestrian/ vehicle interface and safety at the curb. The proposal is supported in this regard.

C3 Parking Facilities

The original consent allows for two (2) vehicles to be parked on-site undercover within the approved garage accessed via the new gutter crossing on Beach Street. The provision of an additional two (2) parking spaces within the proposed hardstand area, whilst increasing the sites formal parking provisions, is at the expense of landscaped and private open space areas.

The provision of four (4) spaces on site when weighed against the significant reduction in landscaped open space, is on balance a poor planning outcome and inconsistent with the provisions of the relevant controls. Thus the formalising of the hardstand area within the front setback off Carrington Parade is not supported and the site will remain compliant with the two (2) undercover parking spaces provided.

The retaining of the existing gutter crossing on Carrington Parade has no impact upon the provision of parking and is supported.

D1 Landscaped Open Space and Bushland Setting

The removal of 44sqm of landscaped open space for the provision of an additional two (2) vehicle spaces is not supported.

The landscape open space provided is currently 38% or 178.23sqm. The reduction to 29% or 124.5sqm will further constrain the sites ability to provide for adequate water infiltration into the site, reduce opportunities for appropriate plantings and reduce space for both service functions required by the occupants and will not cater for the recreational needs of the occupants.

It is noted that alternative surfaces have been provided to allow the formal parking areas to be included within the landscape open space calculations. It is Councils consistent opinion that these synthetic surfaces are not appropriate for landscaped open space as the soil under the material compresses and does not allow water filtration.

The retaining of the gutter crossing has no impact upon landscape open space and is supported.

D2 Private Open Space

The removal of 44sqm of soft surface is considered to serverely constrain the sites ability to provide for adequate private open space. The remaining grassed areas to the north of the subject dwelling are not of adequate dimention or overall area to cater for the needs of the occupants in a private,area. The proposal for the hardstand area on-site is not supported in this regard.

The retaining of the gutter crossing has no impact upon private open space and is supported.

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.

The proposal has been assessed against the relevant matters for consideration under Section 79C of the EP&A Act 1979. 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 specified in S.5(a)(i) and (ii) 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. Mod2013/0031 for Modification of Development Consent DA2011/0979 granted for Demolition of an existing house and construction of a new dwelling on land at Lot 25 DP 14040,38 Carrington Parade, CURL CURL, subject to the conditions printed below:

A. Add Condition No.1B - 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 Site Plan/ Site Analysis Issue B	19/02/2013	Gartner Trovato Architects

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

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

B. Add Condition No.1C - Deletion of Parking Area

No approval is granted under this Development Consent for any formal parking areas within the primary front setback of the subject site off Carrington Parade, including grass cells, concrete rings or any other synthetic surface. The proposed parking area as shown on the plans is to be deleted and the area is to be maintained as landscaped open space.

Reason: To ensure compliance with WLEP. (DACPLB04)

C. Delete Condition 18. Reinstatement of Kerb

CONDITION 18. - DELETED

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

Mitchell Drake, Development Assessment Officer

The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

	Notification Document	Title	Date
	2013/062690	notification map	27/02/2013

ATTACHMENT C

Reference Number	Document	Date
 2013/058285	NOTIFICATION PLAN - CD	19/02/2013
 2013/058280	Report Statement of Environmental Effects - CD	22/02/2013
 2013/057398	invoice for ram applications - Gartner Trovato Architects	22/02/2013
 2013/057404	DA Acknowledgement Letter - Gartner Trovato Architects	22/02/2013
 2013/058185	Applicant Details	25/02/2013
 2013/058266	Modification Application Form	25/02/2013
 2013/058304	Plans External layout - Large merged	25/02/2013
 2013/058311	Plans Master Set - Large merged	25/02/2013
 2013/061155	File Cover	27/02/2013
 2013/061157	Referral to Development Engineers	27/02/2013
 2013/061162	Referral to AUSGRID - SEPP - Infrastructure 2007	27/02/2013
 2013/062687	notification letters - 88 SENT	27/02/2013
 2013/062690	notification map	27/02/2013
 2013/073511	38 Carrington Parade	07/03/2013
 2013/072381	Withdrawal Memo	07/03/2013
 2013/072790	Development Engineering Referral Response - superseded	07/03/2013
 2013/073348	Natural Environment Referral Response - Biodiversity	11/03/2013
 2013/075573	Development Engineering Referral Response	12/03/2013
 2013/075945	withdrawal rescinded	12/03/2013