

SECTION 96 APPLICATION TO MODIFY A DEVELOPMENT CONSENT ASSESSMENT REPORT

Assessment Officer:	Phil Lane
Address / Property Description:	Lot 39, DP 8139, 132 Headland Road North Curl Curl
Modification of Consent Application No:	MOD2008/0324
Proposed Modifications:	To amend Development Consent DA 2005/0950 – to carry out minor internal layout and external facade changes to the approved dwelling house
Application Lodged:	7 November 2008
Plans Reference:	S01, S02, S03, S04, S05, S06 & S07 (Issue A dated 17.10.08)
Amended Plans:	N/A
Applicant:	Thomas & Gabrielle Fyfe
Owner:	Thomas & Gabrielle Fyfe
Locality:	F5 Curl Curl
Category:	Category 1 (Housing)
Variations to Controls (CI.20/CI.18(3)):	No
Referred to ADP:	No
Referred to WDAP:	No
Land and Environment Court Action:	No
SUMMARY	
Submissions:	None
Submission Issues:	Not Applicable
Assessment Issues:	Building height (Natural ground level to ceiling of the uppermost ceiling) & Side Boundary Envelope
Recommendation:	Section 96 Approval, subject to conditions



LOCALITY PLAN (not to scale)



Subject Site: Lot 39, DP 8139, 132 Headland Road North Curl Curl

Public Exhibition: Under the provisions of the applicable Development Control Plan the subject application has been notified to the adjoining property owners and occupiers. As such, there were 7 notification letters sent.

Background

The development consent (DA2005/0950) was approved on 30 December 2005 and involves ground and upper floor additions to the existing dwelling comprising the following:

- **Lower Ground Floor:** Enlarge existing garage to accommodate two cars
- **Ground Floor:** Add four Bedrooms (one en-suite), bathroom, Bar area and Laundry
- **First Floor:** Add balconies to front and rear elevations, dining area, kitchen, entertainment area, pantry, bathroom and study.



Site Description

The site is regular in shape with a western boundary of 64.685m, a northern boundary of 12.275m, an eastern boundary of 63.24m and a southern boundary fronting to Headland Road of 12.19m and currently contains a two-storey brick dwelling with a tiled roof.

The site falls from the north toward the street by approximately 10.84metres but is not considered a significantly sloping site for the purposes of determining building height compliance.



The subject site viewed from Headland Road

PROPOSED MODIFICATIONS

The proposal modification to the development involves minor internal wall relocations and provision of additional windows to the northern elevation.

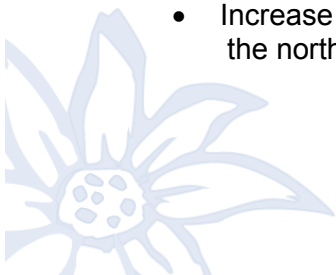
Details of the modifications are as follows:

Garage Level

- Minor alterations to the staircase linking the garage level to the ground floor level.

Ground Floor

- Minor alterations to the staircase linking the ground floor level to the first floor level.
- Deletion of a balcony on the south-western corner.
- Internal reconfiguration of rooms with master bedroom (Bed 1) relocated to the southern end of the building with ensuite and reduction of the building footprint in the south-western corner.
- Increase in the Bed 2 (formerly Bed 4) and reconfiguration of the ensuite and bathroom to the north side of the room.



First floor plan

- Reduction of the balcony on the southern end (reduced eastern portion and southern-western corner).
- Minor alterations to the staircase linking the first floor level to the ground floor level.
- Reduction of the balcony on the northern end.

Building footprint

- A reduction of the building footprint by 4% from the original approved plan.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000.
- c) Warringah Development Control Plan
- d) Warringah Local Environment Plan 2000

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The Section 96 application does not specify whether the proposal is submitted pursuant to S.96 (1A) or S.96 (2), however, based on the size and scope of the modifications, it is considered that S.96 (1A) is the relevant provision.

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 of Consent of Minimal Environmental Impact?	Yes, the proposed modifications involve a reduction in the size and extent of the front and rear deck to the first floor to maximise solar gain and cross ventilation. The reduced building footprint is beneficial in terms of landscape open space and the size of the building relief to the adjoining properties.
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 previously modified?	Yes, the proposed modifications do not alter the general description and overall form, character and composition of the development as approved and hence will result in the modified development being substantially the same as the development which was originally approved by Council.
Section 96(1A) (c) & (d) – Public Exhibition of subject application / submission	See discussion on “Public Exhibition” in this report.
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.

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	See discussion on “Draft Environmental Planning Instruments” in this report.
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 regulations	Clause 7 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been addressed and no condition of consent is required to this approval. Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter has been addressed and no condition of consent is required.
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 modifications to the approved development on the natural and built environment are addressed under the General Principles of Development Control in this report. In summary, the modifications are satisfactory in this regard. (ii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. (iii) The proposed modification to the approved development will not have a detrimental social impact in the locality considering the residential character of the proposal will be maintained.
Section 79C (1) (c) – the suitability of the site for the development	The suitability of the site for the proposed development was addressed under the original development consent. The current modifications to the development do not alter that finding.

Section 79C 'Matters for Consideration'	Comments
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	The current application is in the public interest as it will result in a slight lessening of the environmental impact of the development via the reduction of the extent of footprint of the building. The reduction in the size of the rear and front balconies allows adequate spaces for entertainment and recreational purposes while maintaining the privacy and amenity of the adjoining properties. Additionally the proposed modification is consistent with the provisions of WLEP 2000.

NOTIFICATION & SUBMISSIONS RECEIVED

The application was notified by letter dated 18 November 2008 to 7 adjoining properties including the objector to the original development application. No submissions were received in response to the modification application.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

N/A

Regional Environment Plans (REPs)

N/A

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

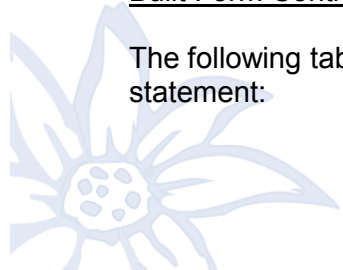
Desired Future Character (DFC)

The subject site is located in the E2 Dee Why Lagoon Suburbs Locality under Warringah Local Environmental Plan 2000.

The approved development is defined as “Housing” under the WLEP 2000 dictionary and is identified as Category 1 development in this locality. The original assessment determined that the approved development was consistent with the DFC. The proposed modifications to the development do alter its classification and the modified development is similarly consistent with the DFC.

Built Form Controls (Development Standards)

The following table outlines compliance with the relevant Built Form Controls of the above locality statement:



Built Form Standard	Required	Approved Development	Proposed Modification	Compliance
Building Height Overall height in Metres/NGL to underside of uppermost ceiling	8.5m and 7.2m	8.4m/7.446m	8.5m/8.1m	NO
Front Setback	6.5m	6.5m	7.5m	YES
Housing Density	1 dwelling per 600sqm	1 dwelling per 778m ²	Unchanged	YES
Rear Setback	6m	29m	7.136m to modified dwelling	YES
Side Setbacks	0.9m	(East)1.435m (West)1.771m	0.9m both east & west (measured to the new projecting elements)	YES
Side Boundary Envelope	45 degree angle commencing at 5 metres above NGL at the side boundary	Does not comply	Extent of additional non-compliance i. Eastern Elevation – 0 to 0.5m ii. Western elevation – 0 to 0.5m	NO
Landscaping	40%	42%	45.6%	YES

Building Height (height to underside of ceiling)

The modifications to the approved development do not comply with the 7.2m element of the building height built form control, which is the height of the building to the underside of the upper ceiling.

Comments

Although not considered significant, the slope of the site and existing subfloor has contributed to this non-compliance.

The proposed height to the underside of the ceiling is 8.1 metres. The current site has a 13% slope located within the proposed footprint of the modified dwelling house. Though this is not recognised as a 'Significantly Sloping Site' (slopes greater than 20%), which allows for a relaxation to this standard provided the building does not exceed 8.5 metres and is designed and located to minimise the bulk of the building and has minimal visual impact when viewed from the downslope sides of the land, these principles can be applied.

Nevertheless this slope has contributed to the non compliance particular to the southern portion of the building. The proposal is considered to mitigate the effects of this minor non-compliance with the introduction of a stepped facade and front balcony that are considered to reduce the visual dominance of the proposal on the streetscape. Windows of varying sizes are incorporated into the western and eastern elevations and new projecting elements providing some articulation avoiding continuous wall planes.

The proposal is considered to be of a similar architectural scale to adjoining dwellings and of a similar visual bulk and is considered acceptable in terms of the General Principle for Building Bulk. Additionally, the proposal provides for adequate view sharing and access to sunlight to adjoining properties.

Accordingly, the variation to the building height built form control is supported under Clause 20 of WLEP (2000).

Side Boundary Envelope (5 metres)

The proposal does not comply with the side boundary envelope control determined by a projecting plane at 45 degrees from a height of 5 metres above natural ground level at the side boundaries.

Comments

Consent may be granted for a second storey addition to an existing dwelling that to a minor extent does not comply with this control. The current site has a 13% slope located with the proposed footprint of the modified dwelling house. Although not considered a 'Significantly Sloping Site' as per the definition under the WLEP 2000, the existing subfloor has contributed to this non-compliance.

It is noted that the approved development does not comply with the side boundary envelope control as it applies to the eastern and western elevations, involving encroachments of up to 1.5 metres. However, the current application involves additional variations in the order of 0 to 0.5m for the length of 6.3m on the eastern elevations and 3.6m on the western elevations. These additional non-compliance are considered 'minor' as they affect a small proportion of the upper storey located toward the rear of the dwelling. The proposal is considered to mitigate the effects of this minor non-compliance with the introduction of a stepped facade and roof profile that are considered to reduce the visual dominance of the proposal when viewed from adjoining properties. Also, windows of varying sizes are incorporated into the west and east elevations providing some articulation avoiding continuous wall planes.

The proposal is considered to be of a similar architectural scale to adjoining dwellings and of a similar visual bulk and is considered acceptable in terms of the General Principle for Building Bulk. Additionally, the proposal provides adequate separation between buildings creating a sense of openness and the setbacks provide opportunities for landscaping.

Accordingly, the variation to the side boundary envelope built form control for the new raised elements at the rear of the dwelling is supported under Clause 20 of WLEP 2000.

General Principles of Development Control

The relevant General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 which apply to the assessment of the Section 96 application are addressed as follows:

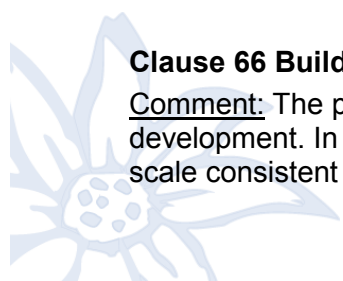
Clause 65 Privacy

Comment: The proposed design takes into consideration the location of neighbouring private open spaces and the reduced rear deck will enhance the privacy of adjoining properties. A reduction in the height of the privacy screens on the rear deck cannot be supported as the elevated levels (52.55AHD) will be up to 3.5 metres above the natural ground levels of the adjoining private open spaces. Therefore, Condition No. 6 will be amended to ensure the rear deck maintains the 1650mm privacy screens to the western and eastern elevations of the deck. Therefore, the proposal is satisfactory in terms of privacy as it involves no significant impacts on adjoining properties.

It is noted that the revised window locations and sizes will maintain reasonable amenity to adjoining properties and dwellings. The new windows will not unreasonable overlooking of habitable rooms and principal private open spaces of adjoining dwellings.

Clause 66 Building Bulk

Comment: The proposed modifications do not significantly alter the building bulk of the approved development. In this regard, the modified development will have a visual bulk and an architectural scale consistent with structures on adjoining and nearby lands and will be complementary to the



surrounding spaces and properties. The proposed modified building will maintain appropriate techniques via varying setbacks stepped roof profile and variable external finishes to provide visual relief to adjoining properties.

Conclusion

The site has been inspected and the application assessed having regard to the provisions of Section 96(1A) of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000 and the relevant codes and policies of Council.

The proposed modifications will result in a slight lessening of the environmental impact of the development via the reduction of the extent of footprint of the building. The reduction in the size of the rear and front balconies still allows adequate spaces for entertainment and recreational purposes while maintaining the privacy and amenity of the adjoining properties. However, a modified condition (No. 6) will ensure that the levels of privacy and amenity are maintained to the adjoining properties private open spaces to the east and west of the subject site with the installation of 1650mm high privacy screens.

The minor internal and external modifications to the approved development will have minimal environmental impact on the adjoining residences and the modified development are assessed as being substantially the same as the original approval granted under DA2005/09850.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, it is recommended that the modification of consent be approved.

Recommendation (Approval)

That the application to the modify Development Consent No DA 2005/0950 under Modification of Consent Application No. MOD2008/0324 to carry out minor internal layout and external facade changes to the approved dwelling house at Lot 39, DP 8139, 132 Headland Road, North Curl Curl be approved as follows:

A. Amendments of the following conditions:

(i) Condition 1 be amended to read: -

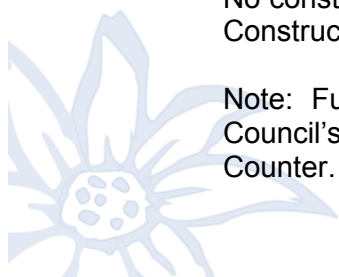
1. Approved Plans And Supporting Documentation

The development is to be carried out in compliance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of consent:

Drawing Number	Revision	Dated	Prepared By
S1	A	17.10.08	K. White
S2	A	17.10.08	K. White
S3	A	17.10.08	K. White
S7	A	17.10.08	K. White

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Note: Further information on Construction Certificates can be obtained by contacting Council's Call Centre on 9942 2111, Council's website or at the Planning and Assessment Counter.



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

B. Deletion of the following conditions:

4. Deleted

5. Deleted

C. Addition of the following Condition

Condition 6 be amended to read-

6. Privacy Screens

Privacy screens are to be installed on the western and eastern sides of the rear deck. The screens are to be a minimum height of 1.6 metres and minimum length of 3.0 metres (abutting the rear wall of the dwelling). The colours, textures and materials of the screens are to complement character, and the design of the dwelling.

Details of the screens are to be incorporated in the architectural plans submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: *To maintain privacy and amenity to adjoining properties.*

Signed
Phil Lane:

Date 14 January 2009

Senior Development Assessment Officer

Signed
Steven Findlay:

Date 14 January 2009

Team Leader Development Assessments

