

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2025/0101
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Responsible Officer:	Tess Johansson
Land to be developed (Address):	Lot 12 DP 6143, 52 Pitt Road NORTH CURL CURL NSW 2099
Proposed Development:	Modification of Development Consent DA2022/0630 granted for Demolition works and construction of a dwelling house including a swimming pool and spa
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
Applicant:	Kenneth Charles Tweedale

Application Lodged:	03/04/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	11/04/2025 to 25/04/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

MOD2025/0101 seeks consent to modify development consent on DA2022/0630 which was approved for demolition works and construction a dwelling house including a swimming pool and spa.

Proposed changes under MOD2025/0101:

Change in wording to the notice of determination,

- For the heading, 'conditions which must be complied with prior to the issue of the occupation certificate' changed to, 'conditions which must be complied with prior to the issue of the final occupation certificate'.
- Or alternative wording in the occupation certificate section of the notice of determination to say, 'A partial occupation certificate ma be issued prior to completion of landscape and stormwater.'

Proposed pool changes:

- Pool water line moved inwards 100mm on the West side of pool. (Change from 1750mm off the boundary to 1850mm)
- North pool waterline moved outwards 50mm. (Change from 1000mm off the boundary to 950mm)
- No changes to outer pool coping.
- Addition of a 500mm high feature wall on top of existing pool along the northern wall of the pool.

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 Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 12 DP 6143 , 52 Pitt Road NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Pitt Road, North Curl Curl. The site is regular in shape with a frontage of 10.06m along Pitt Road and a depth of 45.25m. The site has a surveyed area of 455.3m².

The site is located within the WLEP 2011, R2 Low Density Residential zone and accommodates a dwelling house.

The site slopes from North/ rear of the property to the front/ south of the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining development is characterised by residential dwelling houses. Surrounding development includes, The Glen Surf Reserve and North Curl Curl Beach.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

A search of Council's records has revealed the following:

Application **DA2004/0881** for Erection of 2 Storey Dwelling & Demolition of Existing Dwelling was approved by Warringah Council on the 04/08/2006

Application **DA2021/0489** for Alterations and additions to a dwelling house including swimming pool and spa was withdrawn on the 26/07/2021

Application **DA2022/0630** for Demolition works and construction of a dwelling house including a swimming pool and spa was approved on 29/09/2022 by Northern Beaches Council.

Application **Mod2025/0010** for WITHDRAWN - Modification of Development Consent DA2022/0630 granted for Demolition works and construction of a dwelling house including a swimming pool and spa was withdrawn on the 06/02/2025

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 DA2022/0630, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(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 for the following reasons:
(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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0630 for the following reasons: MOD2025/0101 proposes minimal changes to approved DA2022/0630. The proposal seeks to change wording the Notice of Determination, minor modifications to the pool waterline and a additional 500mm high feature wall on the northern edge of the pool.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55(1A) - Other Modifications	Comments
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	
(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	There are no current draft environmental planning instruments.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent

Section 4.15 'Matters for Consideration'	Comments
	authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application. <u>Clause 62</u> and/or 64 of the EP&A Regulation 2021 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. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent <u>Clause 69</u> of the EP&A Regulation 2021 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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 11/04/2025 to 25/04/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Louise Elizabeth Barry	53 Austin Avenue NORTH CURL CURL NSW 2099

The following issues were raised in the submissions:

- **Rear Boundary Setback:** The modification proposes a 950mm rear boundary setback which is a 50mm change from the approved 1m pool rear setback. The Submission requests the pool remains a rear boundary setback of 1m.

The above issue is addressed as follows:

- **Section B9 of Warringah DCP** states that, *"On land zoned R2 Low Density Residential, and land zoned RU4 Rural Small Holdings that has frontage to "The Greenway", Duffy's Forest, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met."*

The backyard has an area of 56.6m², the pool area is 20.1m². Therefore the pool area takes up a total of 35.5% of the rear setback area. This 35.5% complies with rear boundary exception under section B9 of WDCP.

A merit assessment against the objectives of the control can be found in section B9 of this assessment report.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The modification plans indicate that no additional landscape features are impacted. No objections are raised regarding landscape issues.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A414587_02 dated, 10/04/2022).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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

The Principle Development Standards do not apply to this modification application.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

MOD2025/0101 does not propose any changes to the building height.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	9.1m	no changes	N/A
B3 Side Boundary Envelope	West- 5m	34% variation	no changes	N/A
	East- 5m	64% variation	no changes	N/A
B5 Side Boundary Setbacks (pool)	West- 0.9m	1.75m	1.85m	Yes
	East- 0.9m	4.7m	4.4m (pool feature wall)	Yes
B7 Front Boundary Setbacks	6.5m	8.29m	no changes	N/A
B9 Rear Boundary Setbacks	6m	1m	950mm	No
D1 Landscaped Open Space and Bushland Setting	40%	37.45%	no changes	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D12 Glare and Reflection	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Side boundary envelope non-compliance with the requirement.

- This modification application will not affect the previously approved side boundary envelope.

B9 Rear Boundary Setbacks

Description of non-compliance

DA2022/0630 approved a 1m rear boundary setback with consideration to the following rear boundary exception, and a merit assessment:

'On land zoned R2 Low Density Residential, and land zoned RU4 Rural Small Holdings that has frontage to "The Greenway", Duffy's Forest, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met.'

MOD2025/0101 proposes a change from the approved 1m pool waterline setback to a 0.95m rear boundary setback. This minor modification will meet the rear boundary setback exception with the pool being 35.5% of the rear setback and not exceeding the 50% provision.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

The Minor modification will maintain the existing deep soil landscaping areas and will not result in a net loss of deep soil landscaping within the site.

- *To create a sense of openness in rear yards..*

The proposal does not unreasonably impact the existing sense of openness in the rear yard

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

The pool coping remains unchanged from the approved plans. The 50mm waterline change will not adversely affect privacy between buildings.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Nearby development, has a consistent pattern of development within the rear setback comprising swimming pools and other similar development.

- *To provide opportunities to maintain privacy between dwellings.*

The minor modification will not reduce privacy to adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

The landscaped open space and bushland setting requirement is 40% the site is non-compliant at 37.45%. This modification application does not seek to change this previously approved calculation.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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 Section 7.12 Contributions Plan 2024

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 2021;
- 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. Mod2025/0101 for Modification of Development Consent DA2022/0630 granted for Demolition works and construction of a dwelling house including a swimming pool and spa on land at Lot 12 DP 6143,52 Pitt Road, NORTH CURL CURL, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-518407 MOD2025/0101	The date of this notice of determination	MOD2025/0101 seeks to modify development consent DA2022/0630 Proposed changes under MOD2025/0101: Change in wording to the notice of determination: - Modify the timing and staging of the development for the issue of the Occupation Certificate. Proposed pool changes: - Pool water line moved inwards 100mm on the west side of pool. (Change from 1750mm off the boundary to 1850mm) - North pool waterline moved outwards 50mm. (Change from 1000mm off the boundary to 950mm) - No changes to outer pool coping. - Addition of a 500mm high feature wall on top of existing pool along the northern wall of the pool. Amended conditions: Condition 23- Landscape completion - To allow a partial occupation certificate prior to completion of landscape works Condition 24- Stormwater disposal - To allow a partial occupation certificate for the pool prior to stormwater disposal completion

Modified conditions

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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

14/03/21

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA7	/	First Floor Plan	Architecture / Darren Tye	14/03/21
DA13	/	Sections, E-E, Drive	Architecture / Darren Tye	14/03/21

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	/	Architexture / Darren Tye	10 April 2022

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Modify Condition 23 - Landscape Completion- to read as follows:

Landscape Completion-

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing DA.01-DA.03 by Manna Landscapes dated 05/08/22), and inclusive of the following conditions:

- i) relocate 2 x Elaeocarpus reticulatus on the eastern side of the dwelling to the area between the front entry and the front wall of the garage, to the eastern side of the proposed stepping stones, and a minimum of 2.2 metres from the building wall,*
- ii) the 1 x Elaeocarpus reticulatus in the courtyard between the guest bedroom and the gym shall be installed centrally and at least 2.2 metres from the building walls,*
- iii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,*
- iv) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and located either within garden bed or within a prepared bed*
within lawn,
- v) mass planting shall be installed at minimum 1 plant per metre square for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at least 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,*
- vi) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,*
- vii) should any vegetation shown to be retained be damaged or removed during construction, it shall be replaced with a like-for-like substitute to ensure the existing character is maintained*

Prior to the issue of an Final Occupation Certificate, details from a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent. A partial Occupation certificate may be issued prior to landscape completion.

Reason: Environmental amenity

C. Modify Condition 24 - Stormwater Disposal - to read as follows:

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Council's Water Management for Development Policies by a suitably qualified Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Notwithstanding the above, a partial Occupation Certificate may be issued for the swimming pool prior to the completion of the stormwater drainage works.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development, while allowing for the staged occupation of the development.

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

Signed



Tess Johansson, Planner

The application is determined on 16/05/2025, under the delegated authority of:



Rodney Piggott, Manager Development Assessments