

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2015/0009
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot A DP 356822 , 101 Pitt Road NORTH CURL CURL NSW 2099
Proposed Development:	Modification of Development Consent DA2013/1338 granted for Subdivision of land.
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:	Thomas Benedict Fyfe Gabrielle Lea Fyfe Gail Dianne Shipway Gregory Martin Gillespie Kelly Gillespie
Applicant:	Thomas Benedict Fyfe

Application lodged:	30/01/2015
Application Type:	Local
State Reporting Category:	Other
Notified:	10/02/2015 to 25/02/2015
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	0
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon 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

Warringah Development Control Plan - B9 Rear Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot A DP 356822 , 101 Pitt Road NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject land is legally described as Lot A DP 356822 known as 101 Pitt Road North Curl Curl. The site is located on the southern site of Pitt Road, which has vehicular access from Pitt Road and a site area of 2018m². The site falls approximately 3.2m towards the south across the surface of the site and contains a number of trees speared across the site. The subject site is currently occupied by a single dwelling house and attached single carport structure and number sheds, which is accessed through an existing driveway that is located on eastern side of the existing dwelling. Existing development surrounding the sites consist of single residential dwellings configured on lots ranging from 590m² to 900m² to the north and south. The subject site directly adjoins single residential dwellings to the east, which has been subdivided into three lots similar to the proposed development. The western boundary of the site adjoins a three storey residential flat building.

Map:



SITE HISTORY

Approved Development

Development Application No. DA2013/1338 for demolition works and the subdivision in the form Torrens Title of one (1) Lot into three (3) Lots was approved by Council on 10 February 2014 as a Deferred Commencement Consent.

The Deferred Commencement Condition was satisfied by the applicant on 27 August 2014 and the consent become effective from 27 August 2014.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent No. DA2013/1338 in the following manner:

- The removal of parking bay at the rear of the front dwelling house, due to the fact that double garage has been approved as part of the DA 2014/1191 for the dwelling house ;
- The deferral of the OSD tank requirement to the Development Application for the dwelling house DA2014/1191.

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 DA2013/1338 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) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2013/1338.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	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 concerning the proposed modification within any	See discussion on "Public Exhibition" in this report.

Section 96(1A) - Other Modifications	Comments
period prescribed by the regulations or provided by the development control plan, as the case may be.	

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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <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 a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building

Section 79C 'Matters for Consideration'	Comments
	Act 1989. This matter has been addressed via a condition in the original consent. 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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed 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

Internal Referral Body	Comments
Development Engineers	Development Engineers have reviewed the proposed modification and raise no objections to the proposal subject to :

Internal Referral Body	Comments
	1. Deletion of condition 7 of the Consent 2. Insertion/Inclusion of the following condition.. On-site Stormwater Detention Compliance Certification Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by Taylor Consulting Engineer, drawing number 23613-1 dated 1 August 2013. Onsite Stormwater Detention system will be required for proposed lots 1 and 2 only. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate. Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. 3. Insertion/Inclusion of the following condition: Positive Covenant for future provision of On-site Stormwater Detention The creation of a "Positive Covenant" over the proposed Lot 3 requiring that any future development is to provide an on-site stormwater detention system. The on-site stormwater detention system is to be designed and constructed in accordance with Council's Onsite Stormwater Detention Technical Specification. The terms of the positive covenant are to be prepared to Council's satisfaction. Warringah Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development 4. Deletion of condition 8 5. Insertion/Inclusion of the following condition: Submission of Engineering Plans Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of Driveway and drainage system which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy and to the following requirements:-

Internal Referral Body	Comments
	• 3.5 metres wide concrete driveway with 2 % cross fall designed by a Civil Engineer. The stormwater runoff from the paved area are to be collected and connected to the proposed inter allotment drainage system. • Passing bay 5.0 metres wide for a distance of at least 10 metres. • Inter allotment drainage to connect to Council drainage system in Lillee Street. • Construction of a 1.8 M EKI and pit in Lillee Street. • All pits are to be cast in situ. • All public utility services are to be provided and indicated on the plan. • Deletion of the rear parking bay on proposed Lot 1. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate. Reason: To ensure compliance with Council's specification for engineering works.
Traffic Engineer	No objection is raised on the proposed subdivision subject to development engineers approval, and subject to the provision of a turning area for each dwelling enabling vehicles to exit and enter the driveway in forward direction.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local 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:	450m ²	Lot 1 - 510m ² Lot 2 - 505m ² Lot 3 - 736.8m ²	No changes are proposed	N/A	Yes
Height of Buildings:	8.5m	No dwelling houses are proposed as part of this application	No changes proposed	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.6 Subdivision - consent requirements	Yes
Land Use Table	Yes
4.1 Minimum subdivision lot size	Yes
5.3 Development near zone boundaries	Yes
Part 6 Additional Local Provisions	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	Lot 1 - no changes to existing dwelling Lots 2 and 3 - This is a matter for assessment when applications are lodged for new dwellings on these lots.	No changes are proposed	N/A
B3 Side Boundary Envelope	4m/5m	Lot 1 - no changes to existing dwelling Lots 2 and 3 - This is a matter for assessment when applications are lodged for new dwellings on these lots.	No changes are proposed	N/A
B5 Side Boundary Setbacks	0.9m	Lot 1 (existing dwelling at 5m to eastern and 5.9m to western boundary) Lots 2 and 3 - This is a matter for assessment when applications are lodged for new dwellings on these lots.	No changes are proposed	N/A
B7 Front Boundary Setbacks	6.5m	Lot 1 - (existing dwelling at 7m) Lots 2 and 3 - This is a matter for assessment when applications are lodged for new dwellings on these lots.	No changes are proposed	N/A
B9 Rear Boundary Setbacks	6m	Lot 1 - (existing dwelling at 8.2m - open car parking within the	No changes are	N/A

		6m setback) Lots 2 and 3 - This is a matter for assessment when applications are lodged for new dwellings on these lots.	proposed	
D1 Landscaped Open Space and Bushland Setting	40%	Lot 1 - (existing dwelling provides greater than 40% LOS) Lots 2 and 3 - This is a matter for assessment when applications are lodged for new dwellings on these lots.	No changes are proposed	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
R2 - All other land in R2 Zone	Yes	
Front Boundary Exceptions - R2	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
Part C Siting Factors	Yes	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	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
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

No Changes are proposed as part of the proposed modification to the already approved non-compliance rear setback built form control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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. Mod2015/0009 for Modification of Development Consent DA2013/1338 granted for Subdivision of land. on land at Lot A DP 356822, 101 Pitt Road, NORTH 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

Engineering Plans		
Drawing No.	Dated	Prepared By
23613 -3/C (Driveway Plan & Long Section)	30 July 2014	Taylor Consulting Pty Ltd
23613 - 5/C (Structural - Driveway Details)	30 July 2014	Taylor Consulting Pty Ltd
23613 -1/D (Stormwater Drainage Plan & Long Section)	12 July 2014	Taylor Consulting Pty Ltd
M5532 -660402 (sheet 1 of 2) (Stormwater Layout)	21 October 2014	Ibrahim Stormwater Consultants

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:

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

B. Amend Condition < No. 7 - On-site Stormwater Detention Compliance Certification> to read:

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by Taylor Consulting Engineer, drawing number 23613-1 dated 1 August 2013. Onsite Stormwater Detention system will be required for proposed lots 1 and 2 only.

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

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

C. Amend Condition < No. 8 - Submission of Engineering Plans to read:

Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of Driveway and drainage system which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy and to the following requirements:-

- 5 metres wide concrete driveway with 2 % cross fall designed by a Civil Engineer. The stormwater runoff from the paved area are to be collected and connected to the proposed inter allotment drainage system.
- Passing bay 5.0 metres wide for a distance of at least 10 metres.
- Inter allotment drainage to connect to Council drainage system in Lillee Street.
- Construction of a 1.8 M EKI and pit in Lillee Street.
- All pits are to be cast in situ.
- All public utility services are to be provided and indicated on the plan.
- Deletion of the rear parking bay on proposed Lot 1.

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

Reason: To ensure compliance with Council's specification for engineering works.

D. Add a new Condition < No. 34 - Positive Covenant for future provision of On-site Stormwater Detention to read:

The creation of a "Positive Covenant" over the proposed Lot 3 requiring that any future development is to provide an on-site stormwater detention system. The on-site stormwater detention system is to be designed and constructed in accordance with Council's Onsite Stormwater Detention Technical Specification.

The terms of the positive covenant are to be prepared to Council's satisfaction. Warringah Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development

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

Lashta Haidari, Senior Development Planner

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
 2015/035867	Notification Map	10/02/2015

ATTACHMENT C

Reference Number	Document	Date
 MOD2015/0009	101 Pitt Road NORTH CURL CURL NSW 2099 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	30/01/2015
 2015/025625	DA Acknowledgement Letter - Thomas Benedict Fyfe	30/01/2015
 2015/026732	Regarding submitted development applications - 101 Pitt Road North Curl Curl - Tom Fyfe	01/02/2015
 2015/027609	Plans Large - Stormwater Drainage - Long Sections	02/02/2015
 2015/027567	Modification Application Form	02/02/2015
 2015/027568	Applicant Details	02/02/2015
 2015/027573	Plan - Survey	02/02/2015
 2015/027576	Plans - Notification	02/02/2015
 2015/027587	Report Statement of Environmental Effects	02/02/2015
 2015/027593	Report - Stormwater Design Calculations	02/02/2015
 2015/027599	Plans - Stormwater and Layout Notes	02/02/2015
 2015/027619	Plans Large - Driveway Long-Section and Structural	02/02/2015
 2015/027635	Plans - Master Set	02/02/2015
 2015/033947	File Cover	09/02/2015
 2015/035866	Notification letter 37	10/02/2015
 2015/035867	Notification Map	10/02/2015
 2015/035871	notification letter & plans posted	10/02/2015
 2015/050779	Traffic Engineer Referral Response	23/02/2015
 2015/066527	Development Engineering Referral Response	09/03/2015