

AGENDA

EXTRAORDINARY DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held on

FRIDAY 25 JUNE 2021



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Extraordinary Development Determination Panel to be held on Friday 25 June 2021

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 23 June 2021	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	Mod2021/0058 - 93 Headland Road, North Curl Curl - Modification of Development Consent DA2016/0545 granted for demolition work and construction of a dwelling house with a swimming pool.....	5

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 23 JUNE 2021

RECOMMENDATION

That the Panel note that adoption of the Minutes of the Development Determination Panel held 23 June 2021 be deferred to the following meeting on 14 July 2021.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 MOD2021/0058 - 93 HEADLAND ROAD, NORTH CURL CURL -
MODIFICATION OF DEVELOPMENT CONSENT DA2016/0545
GRANTED FOR DEMOLITION WORK AND CONSTRUCTION
OF A DWELLING HOUSE WITH A SWIMMING POOL.

REPORTING MANAGER Anna Williams
TRIM FILE REF 2021/443111
ATTACHMENTS 1 Assessment Report
2 Working Plans

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Mod2021/0058 for Modification of Development Consent DA2016/0545 granted for demolition work and construction of a dwelling house with a swimming pool on land at Lot 4 DP 10571, 93 Headland Road, North Curl Curl, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0058
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 4 DP 10571, 93 Headland Road NORTH CURL CURL NSW 2099
Proposed Development:	Modification of Development Consent DA2016/0545 granted for demolition work and construction of a dwelling house with a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Aphrodite Carroll Anthony James Carroll
Applicant:	Anthony James Carroll

Application Lodged:	23/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/03/2021 to 19/03/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

EXECUTIVE SUMMARY

The Modification Application seeks to reintroduce floor space at the lower floor of the dwelling that was deleted in a previous Modification Application. Whilst these works are almost identical to works that were originally approved and do not attribute to any unreasonable impacts of their own accord, the circumstances relating to the site as a whole now drastically differ from those at the time that the original consent was granted. In particular, separate approval under a Complying Development Certificate (CDC) has been issued for a secondary dwelling in the rear yard, in an area of landscaping that was relied upon in the original development consent to justify multiple areas of built form non-compliance. The resultant development now shown in the modification plans, which include the CDC

approved secondary dwelling, is inconsistent with Council's plans and policies, and as such, is not substantially the same as that originally approved. Further, the process undertaken thus far is not orderly development and is not in the public interest.

The application is referred to the DDP, under the discretion of the Executive Manager, with a recommendation of refusal.

PROPOSED DEVELOPMENT IN DETAIL

The Modification Application is inconsistent with respect to the works proposed.

The statement of environmental effects limits the works subject to the modification application as follows;

- *new openings to the "void",*
- *internal alterations to the "void"*
- *reinstate the use of the void to habitable space as per previous approval.*

However, the Modification Plans also demonstrate the inclusion of a secondary dwelling in the rear yard, which was approved by a separate CDC issued under the provisions of SEPP Affordable Rental Housing (SEPP ARH) and SEPP Exempt and Complying Development. The area of the secondary dwelling has been excluded from the landscaped area calculation diagrams provided, and the Modification Application was also supported by an amended BASIX Certificate that makes reference to the reduced landscaped area arising from the inclusion of the secondary dwelling in the rear yard. However, the SEE states that "the landscaped area remains as existing as a result of this application".

The Modification Application is also unclear as to the treatment of the area around the secondary dwelling, which is shown blank on the modification plans, inconsistent with the approved CDC and the as-built works on the ground.

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 - 6.4 Development on sloping land
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 4 DP 10571 , 93 Headland Road NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The site is located on the southern side of Headland Road on a regular shaped block of land that falls away steeply from the street. The site has a 12.19m wide frontage to the street, a maximum depth of 45.11m and a total area of 549.9m².</p> <p>The dwelling and swimming pool approved in DA2016/0545 have been constructed on site. A secondary dwelling is located within the rear of the site. There are also large rock outcrops in the rear, which have been disturbed as a result of the construction of the secondary dwelling.</p> <p>The surrounding development is a mix of old and contemporary houses of various levels and heights. There are views across the site towards Curl Curl Beach available from the opposite side of Headland Road and along the western side of Cassia Street.</p>

Map:



SITE HISTORY

On 1 August 2016, Council issued development consent DA2016/0545 for the demolition of the existing dwelling and the construction of a new dwelling at the subject site.

On 8 January 2018, Council received a Notice of Commencement in relation to DA2016/0545.

On 19 March 2018, a CDC was issued by a Private Certifier for a secondary dwelling in the rear yard (Council record CDC2018/0250). Council received complaints in relation to this application, and it was found that the approval had been granted in error, because the total floor space across both the secondary dwelling (approved by CDC) and the primary dwelling (approved under DA2016/0545) was greater than permitted for complying development under Schedule 1 of SEPP ARH (being 330m² for both the primary and secondary dwelling).

On 22 January 2019, Modification Application MOD2019/0021 was lodged with Council to modify DA2016/0545. The proposed modifications included walling in part of the approved floor space of the primary dwelling, making it a 'void' area. This was intended to rectify the discrepancy with the non-compliant total floor space for the CDC for the secondary dwelling by reducing the total floor space across the two developments. Noting that the dwelling was nearing completion and the area in question had already been constructed, the creation of a void area was considered to be the most practical solution, as the area could not be easily or readily demolished. The void area equates to approximately the same area of the secondary dwelling (57m²).

On 22 May 2019, Modification Application MOD2019/0021 was approved by Council, with stamped plans indicating the new 'void' area on level 1, and the following condition:

35. Requirements for Occupation

There are to be no internal finishes such as rendering of walls, fitting of windows and doors, false ceilings, electrical works or plumbing works permitted within the areas which are the subject of this Modification Application (MOD2019/0021).

Reason: To ensure compliance with legislation requirements.

On 29 July 2019, a Modified CDC was issued in relation to the secondary dwelling. The Modified CDC includes reference to the reduced area of the primary dwelling.

On 15 February 2021, a final occupation certificate for the secondary dwelling CDC was issued.

On 23 February 2021, the subject Modification Application was lodged with Council to reinstate the void area that was approved under MOD2019/0021, and return the floor space as originally approved.

On 15 June 2021, the assessing officer and Manager undertook an inspection of the site in the presence of the property owners. Levels One and Two of the primary dwelling were inspected, however access to Level 3 was not permitted. An inspection of the perimeter of the secondary dwelling was also undertaken.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55(1a) Assessment

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	<p>Yes.</p> <p>The physical works proposed in the subject application are of minimal environmental impact. The reinstatement of the floor space previously deleted does not directly attribute to any unreasonable impacts upon the amenity of adjoining properties or the natural environment.</p>
(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	<p>No.</p> <p>It is appreciated that the application currently before Council seems simple, in so far as it proposes to reinstate floor space approved by DA2016/0545 and subsequently removed in an earlier modification (MOD2019/0021). However, as concluded by the NSW LEC in <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> [1996] NSWLEC 280, the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified. The comparison should involve a qualitative and quantitative appreciation of the developments in their "proper contexts (including the circumstances in which the development consent was granted)" [para. 56]. Further, the court found that a numeric or quantitative evaluation of the modification when compared to the original consent absent of any qualitative assessment will be "legally flawed" [para. 52].</p> <p>In consideration of the circumstances relating to this issuance of development consent DA2016/0545, the following matters are of relevance:</p> <ol style="list-style-type: none"> The development consent was issued with respect to the demolition of the existing dwelling and the construction of a new dwelling at the subject site. At the time that the original application was approved, no separate approval had been issued for the secondary dwelling. The development consent was issued despite contravention of the maximum building height development standard. The building height breach was supported in circumstances where the proposal maintained approximately 40% of the site as landscaped open space, in accordance with the requirements of WDCP 2011. This landscaping was relied upon to ensure an "integrated site landscape regime" that would "soften and screen the building when viewed from the street and neighbouring residential properties". Further, the landscaped outcome on site was supported by Council's Landscape Officer as the rock outcrops at the rear of the site were retained. The development consent was issued despite contravention of the side boundary setbacks. However, the non-compliance was supported in the circumstances where approximately 41% of the site was maintained as landscaped open space.

Section 4.55(1A) - Other Modifications	Comments
	<p>The applicant is now asking Council to increase the floor area of the dwelling and accept the overall scale of the development without the compliant landscaped area that was relied upon previously. The resultant development outcome is no longer consistent with the 40% minimum landscaped area requirement prescribed by WDCP 2011, and the pre-existing rock outcrops are no longer wholly maintained in an undisturbed state. Furthermore, the works the subject of the modification application are unclear, such that Council cannot be certain of the resultant development or the risk associated with the geotechnical hazard that affects the site.</p> <p>The bulk, scale and density of the development on the site, which now includes a detached secondary dwelling and results in a significant departure from Council's minimum landscaped area requirements, is not essentially and materially the same as that which was originally approved.</p> <p>It is noted that whether the development is substantially the same is a threshold test, which has not been met in this instance. Nonetheless, a full merit assessment of the modified development has been undertaken for completeness.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>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.</p>
<p>(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.</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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 2000 (EP&A Regulation 2000)	<p><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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an updated BASIX Certificate.</p> <p><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.</p> <p><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 in the original consent.</p> <p><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 in the original consent.</p>
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	<p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>(iii) Economic Impact</p> <p>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable 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	<p>No.</p> <p>The scale and built form of the dwelling house approved pursuant to DA2016/0545 was deemed to be acceptable by Council in circumstances where the rear yard remained vegetated and free of built form. There are numerous points throughout the assessment report where compliance with the landscaped area calculation was relied upon to justify built form non-compliance.</p> <p>Following approval of the dwelling house, the applicant then utilised the provisions of SEPP ARH and SEPP Exempt and Complying to construct a secondary dwelling in the rear yard of the site, in the landscaped area relied upon in DA2016/0545. The secondary dwelling was approved based on the size and location of the pre-existing house, that was smaller than that approved pursuant to DA2016/0545, as the provisions of SEPP ARH limit the floor area of both the primary and secondary dwelling (combined) to 330m².</p> <p>To accommodate both the approved house and the approved secondary dwelling, the size of the new dwelling approved pursuant to DA2016/0545 had to be reduced by approximately the same floor area of the secondary dwelling (57m²). In MOD2019/0021, Council tolerated the introduction of the secondary dwelling in circumstances where the site as a whole was developed in accordance with the provisions of SEPP ARH and SEPP Exempt and Complying. Whilst Council approved the removal of the floor space, no part of issuing the modification application authorised or endorsed the incorporation of the secondary dwelling in the rear yard. In fact, the modification was approved subject to the imposition of a new condition, which reads as follows:</p> <p><i>This approval does not give approval to the "CDC Approved Granny Flat" shown on the approved modification plans.</i></p> <p><i>Reason: Secondary dwelling approved under separate legislative process.</i></p> <p>Subsequent to Council's approval of MOD2019/0021, the complying development certificate issued in relation to the secondary dwelling was also modified to remove reference to the pre-existing dwelling and to</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>specifically nominate the <u>modified</u> new dwelling in its reduced size.</p> <p>By re-introducing the floor space previously removed, the resultant development of both a primary and secondary dwelling on the subject site will no longer meet the provisions of SEPP Exempt and Complying and SEPP ARH, which was a fundamental aspect of Council's previous approval of MOD2019/0021 and the certifiers approval of the secondary dwelling. By re-introducing the additional floor space and by including the secondary dwelling within the plans forming the basis of this modification application, the applicant is now essentially asking Council to endorse the resultant development on the site, inclusive of the secondary dwelling and in turn, the loss of the landscaped area previously relied upon.</p> <p>The process undertaken, whereby a CDC for a secondary dwelling has been issued and completed prior to the issuance of the OC for the primary dwelling, also complicates the way in which the dwelling approval can now be completed, with resultant inconsistencies in the BASIX Certificates relied upon by each separate application. The process is further complicated by works that have been undertaken on site that do not form part of either application, and associated inconsistencies in the documentation before Council.</p> <p>The resultant development (as a whole) shown in the modification plans demonstrates an outcome that significantly departs from Council's plans and policies that can no longer be justified by overarching state legislation. Support of the proposed modifications would not be in the public interest, particularly when the process as a whole does not reflect the orderly development of the land and could be used as a precedent to by-pass Council's standards and controls.</p>

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 development application has been publicly exhibited from 05/03/2021 to 19/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Phillip Edward Lonergan	91 Headland Road NORTH CURL CURL NSW 2099
Mr Graeme John Gallard	8 Bellevue Parade NORTH CURL CURL NSW 2099

The matters raised within the submissions are addressed as follows:

- **Previous history of the development**

The two submissions received raise concerns with the process undertaken to obtain consent for both the primary and secondary dwelling on the subject site. In particular, the submissions highlight that the floor space in question was deleted in order to obtain consent under separate legislation for the secondary dwelling, and as the legislation has not changed, the proposed modification to reintroduce the deleted floor space should not be supported.

Whilst the submission that makes reference to a covenant imposed by Council to restrict use of the space is incorrect, as this recommendation from an internal referral body was not ultimately endorsed in the modified consent issued, the submissions essentially highlight that the application appears to be reliant on a legislative loophole.

As discussed with regards to section 4.55 of the EP&A Act, the proposed development is not considered to represent orderly development, is not in the public interest, and will not result in a development that is substantially the same as that which was originally approved. As such, the application is recommended for refusal in this regard.

REFERRALS

No referrals were sent in relation to this application

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 (Building Sustainability Index: BASIX) 2004

An amended BASIX certificate has been submitted with the application (see Certificate No. 710786S_07).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	40	43

However, the BASIX Certificate is reliant upon providing an area of lawn of 192m², which as discussed with regard to the Landscaped Area control, is not achieved. Furthermore, the amended BASIX Certificate is inconsistent with the BASIX provisions applied in relation to the secondary dwelling, which separately requires a total area of garden and lawn of 210m². The application is silent as to how the two separate BASIX Certificates work along side each other, particularly in such circumstances where they both rely upon inconsistent areas of garden/lawn.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.77m	8.77m (unchanged)	3.07%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.4 Development on sloping land	No

Detailed Assessment

6.4 Development on sloping land

The modified plans include reference to the 'CDC approved granny flat' in the rear yard and nominate the 56.99m² footprint of the approved structure. However, the application is unclear as to the intent of the land immediately surrounding the approved structure, including pathways and rainwater tanks shown on the CDC plans. The plans also lack as-built features of the development site, including retaining walls that have been constructed between the secondary dwelling and the primary dwelling.

The site is affected by geotechnical hazard, and the as-built walls will require geotechnical certification. Alternatively, if the subject plans were approved and the area was to be backfilled, the extent of fill would also trigger the requirement for geotechnical assessment and certification. Given the level of uncertainty in the application, the consent authority cannot be satisfied that the application for development has been assessed for the risk associated with landslides in relation to both property and life, and as such, the application is seen to fail with regard to clause 6.4 of WLEP 2011.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	8.57m	8.57m (unchanged)	No
B3 Side Boundary Envelope	East 5.0m	1.65m (max)	1.65m (max) (unchanged)	No
	West 5.0m	1.54m (max)	1.54m (max) (unchanged)	No
B5 Side Boundary Setbacks	East 0.9m	1.0m	1.0m (unchanged)	Yes
	East 0.9m	Nil (pool)	Nil (pool) (unchanged)	No
B7 Front Boundary Setbacks	6.5m	6.5m	6.5m (unchanged)	Yes
B9 Rear Boundary Setbacks	6m	13.34m	4m	No
D1 Landscaped Open Space and Bushland Setting	40%	41.1%	37.16%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B9 Rear Boundary Setbacks	No	No
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	No
D8 Privacy	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	No
E10 Landslip Risk	No	No

Detailed Assessment

B9 Rear Boundary Setbacks

The plans submitted to accompany the Modification Application include the secondary dwelling approved pursuant to a separate CDC. The secondary dwelling is sited at a distance of 4m from the rear property boundary, inconsistent with the 6m rear setback prescribed by this control. Whilst it is appreciated that the structure was approved under separate legislation, and that the siting of the structure was consistent with the rear setback requirements of that policy, the approval of the original development application relied upon the landscaped and vegetated nature of the rear yard to justify contravention of other controls.

Whilst inconsistency with the rear setback does not warrant refusal in this regard, the encroachment within the rear yard is relevant to the circumstances in which the original application was approved.

D1 Landscaped Open Space and Bushland Setting

The Modification Application includes reference to the secondary dwelling approved under a CDC that has since been constructed on site. The applicant has included the footprint of the approved secondary dwelling within the landscaped area calculation diagrams presented as part of the subject modification, and reports a non-compliance with the 40% minimum requirement, as follows:

Landscaped Area = 204.33m² or 37.16%

It is noted that a reduced landscaped area calculation, excluding the footprint of the secondary dwelling, has also been relied upon in the amended BASIX Certificate provided to support the modification application. (Note: The total area of garden/lawn in the BASIX Certificate differs as it is not based on Council's Landscaped Area definition).

However, the landscaped area calculations are not reflective of the development on the ground, as shown in the aerial image below, with respect to the following:

1. the Modification Plans do not include the as built retaining walls in the rear yard, specifically the one that runs diagonal between the elevated pool and the northern facade of the secondary dwelling,
2. the Modification Plans do not include the access pathway that runs along the eastern boundary and connects to the front door of the secondary dwelling, and
3. the Modification Plans do not include the pebbled area to the north and west of the secondary dwelling.



With these constructed, non-landscaped areas excluded, the landscaped area calculation is further reduced by approximately 32m² to 172m² or 31.3% of the total site.

It is noted that, with the exception of the access pathway connection to the front door of the secondary dwelling, these elements were not approved in the CDC that has been issued for the site. The risk for the applicant in not including these areas in the subject modification application is that, if this modification application is approved, these areas will need to be reverted to soft landscaping and the

as-built retaining walls will need to be removed.

Furthermore, the architectural plans are inconsistent with respect to the stairs approved at the rear of the secondary dwelling, which are shown in elevation but not in plan. Upon an inspection of the site, it is confirmed that these stairs have not been constructed, as the secondary dwelling is essentially level with the land. This is another inconsistency in the proposal before Council which has not been addressed.

However, whether or not these area are included or excluded, the modified plans represent departure from the 40% minimum requirement prescribed. A variation to this control is not considered to be warranted in these circumstances, as the modified development (as a whole) is not consistent with the objectives of the landscaped area control, as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment: The modifications proposed in the subject application do not alter the streetscape presentation of the development.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment: The original application was supported by Council's Landscape Officer on the basis that it preserved natural rock outcrops at the rear of the site. The majority of these rock outcrops have since been impacted or removed as a result of both the approved CDC issued for the secondary dwelling and the retaining walls and paving that have since been constructed between the primary and secondary dwellings. The landscaped area non-compliance can be directly attributed to this impact.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment: Despite the landscaped area non-compliance, the Modification Application was not supported by a Landscaped Plan demonstrating the landscaped treatment of the site. The landscaped area of the site has been considerably diminished in the time since the original application was determined, and landscaping at the rear of the site that was relied upon in the original application has been removed. The as-built landscaping does not mitigate the height, bulk and scale or the approved or modified development.

- *To enhance privacy between buildings.*

Comment: The proposed modifications do not give rise to any privacy impacts.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment: The modified development maintains consistency with the private open space requirements of WDCP 2011 (ie: a minimum area of 35m²).

- *To provide space for service functions, including clothes drying.*

Comment: The modified development is considered to maintain appropriate area to facilitate clothes drying for both dwellings.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment: The landscaped area non-compliance does not attribute to unreasonable stormwater impacts.

At the time that the original application was approved, the development provided in excess of the 40% minimum landscaped area requirement prescribed by this control. The resultant modified landscaped area non-compliance is considered to be both a qualitative and quantitative change arising from the proposed modification, such that the modified development cannot be said to be substantially the same as that which was originally approved.

D8 Privacy

The proposed new window is at the lower level, and off the cinema room, and has a sill height of approximately 1.9m. It is not considered to cause any unreasonable privacy concerns. The other window from the lower level bedroom is to be reinstated as previously approved.

E6 Retaining unique environmental features

and E10 Landslip Risk

The plans presented to accompany the Modification Application demonstrate the incorporation of a secondary dwelling in the rear yard, approved pursuant to a separate CDC. The CDC approval limited excavation in line with the footprint of the secondary dwelling, with no excavation approved beyond the face of the northern facade of the secondary dwelling.

However, it is apparent that additional earthworks have been undertaken at the site, with retaining walls constructed on site to provide a level area to the north of the secondary dwelling. This excavation has impacted upon natural rock outcrops that were to be retained as part of the original development application. The modification plans are inconsistent with respect to this excavation and resultant retaining walls, noting that the retaining walls appear to be indicated on some elevations, but not in section or in plan. The same can be said for the access pathway to the secondary dwelling, which was approved under the CDC and is shown in elevation but not in plan.

If the application is approved in its current form, the Applicant may need to reinstate the area in question to pre-existing condition. However, these works would also be subject to engineering and geotechnical assessment, which has not been submitted.

The site is subject to geotechnical hazard, and no assessment has been undertaken with respect to this excavation or the resulting retaining walls. In light of the impact to natural features of the site and geotechnical hazard affectation, the level of uncertainty regarding the works subject of this modification (as shown on the plans) is considered to present an unreasonable risk.

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 2019

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 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

The proposed modifications do not result in a development that is essentially and materially the same as that which was originally approved. Furthermore, the process undertaken to get to this point is not orderly development, and would set an undesirable precedent that is not in the public interest.

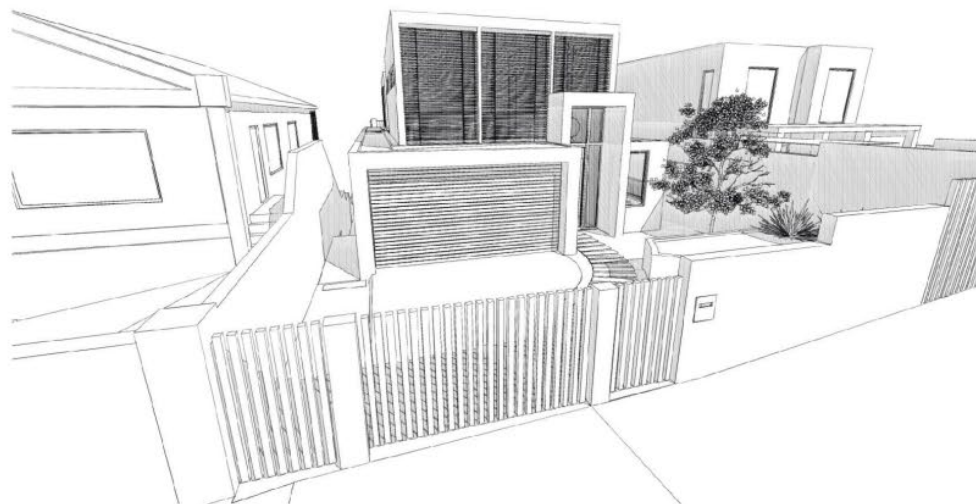
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Modification Application No. Mod2021/0058 for Modification of Development Consent DA2016/0545 granted for demolition work and construction of a dwelling house with a swimming pool on land at Lot 4 DP 10571,93 Headland Road, NORTH CURL CURL, subject to the reasons outlined as follows:

1. The proposed modified development will not result in a development that is substantially the same as that which was originally approved, resulting in inconsistency with the provisions of s4.55(1a) of the Environmental Planning and Assessment Act.
2. The proposed modified development is not in the public interest, as the resultant development represents a significant departure from Council's plans and policies and overarching state

legislation. Further, the process undertaken will set an undesirable precedent, is not orderly development, and as such, is inconsistent with the objects of the Environmental Planning and Assessment Act.



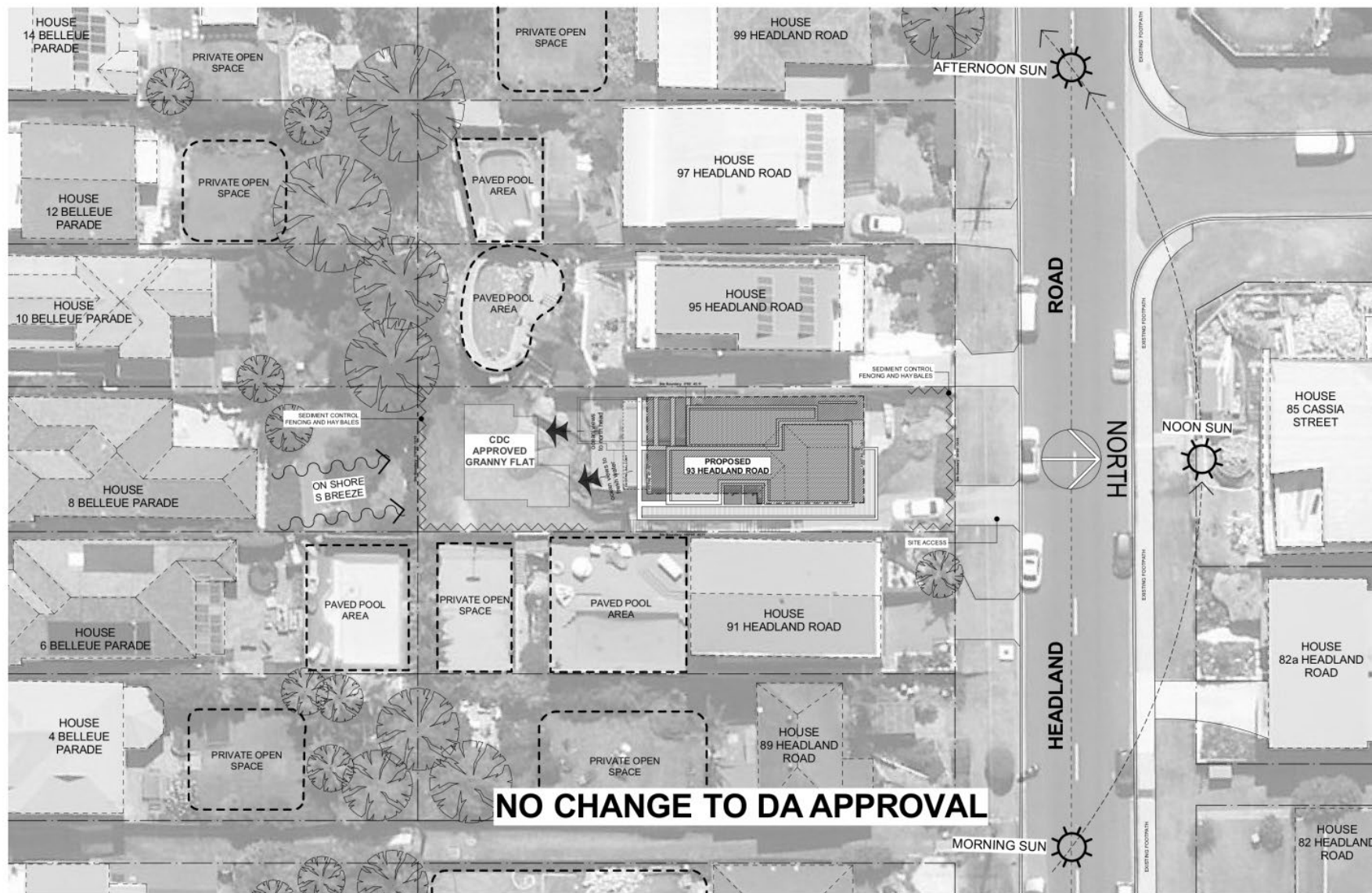
House 93 / Lot 4
Headland Road, North Curl Curl 2099
SECTION 4.55 MODIFICATION - MINIMAL ENVIRONMENTAL IMPACT - 2020



No.	Drawing Name
A.00	COVER PAGE
A.01	NOTIFICATION PLAN
A.02	SITE PLAN / SITE CALCULATIONS
A.03	NOTIFICATION PLAN
A.04	SITE ANALYSIS
A.05	LEVEL ONE & TWO
A.06	NOTIFICATION PLAN
A.07	LEVEL THREE & ROOF
A.08	NORTH & SOUTH ELEVATIONS

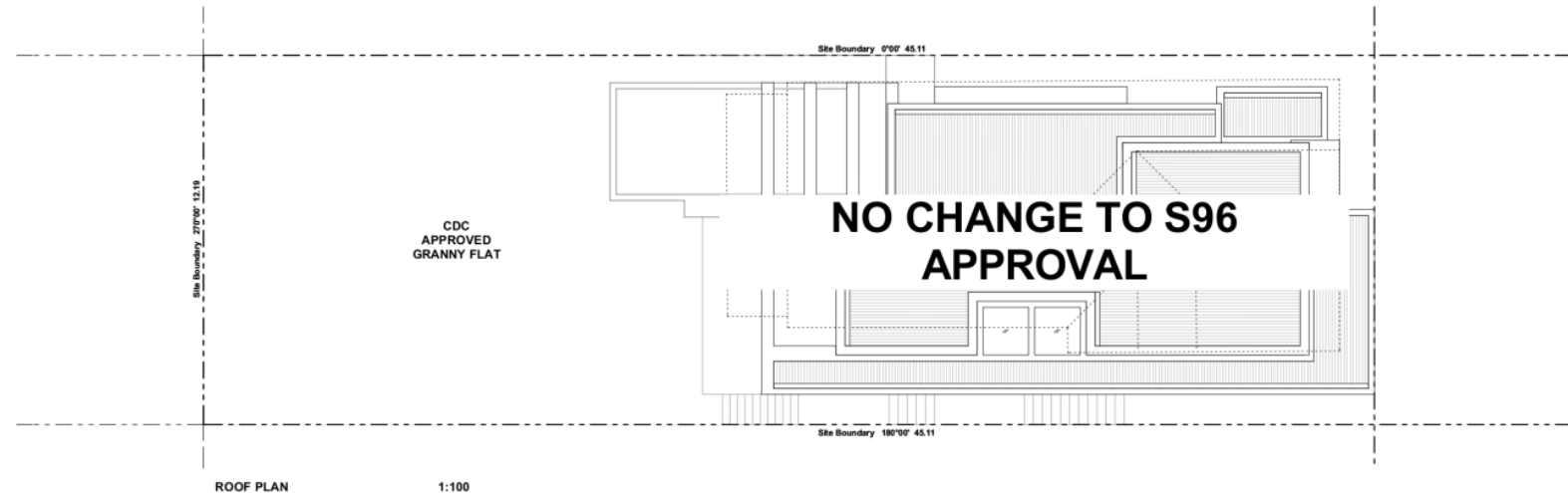
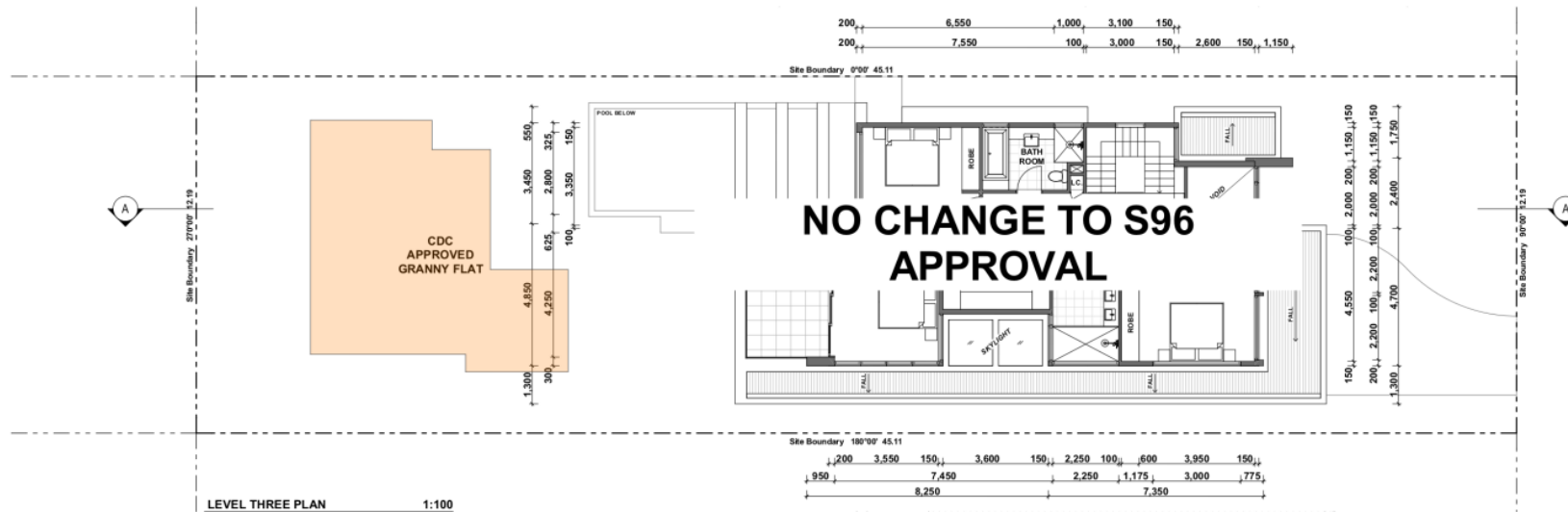


Date:	Issue:	Description:	Date:	Issue:	Description:		The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.		GARTNER TROVATO ARCHITECTS LTD. A N I S T I T U T E	A - 70 THE MIDVA VALLEY ROAD MIDVA VALLEY, NSW 2169 TEL: +61 2 812 847 111 F: +61 2 812 847 165 P: 2112 8471-HEED E: INFO@GT.COM.AU	Project:	Alterations and Additions House 95 / Lot 4 Headland Road, North Curl Curl 2099	Drawn/Drafted:	LT	Date:	JAN 2011
12.02.21	A	MODIFICATION APPLICATION									Client:	Carroll	Project Number:	1537	Scale:	1:100 @ A4
											Drawing:	SECTION 4.55 Application 2020 SITE PLAN / SITE CALCULATIONS	Drawing No.:	A.01	Name:	A

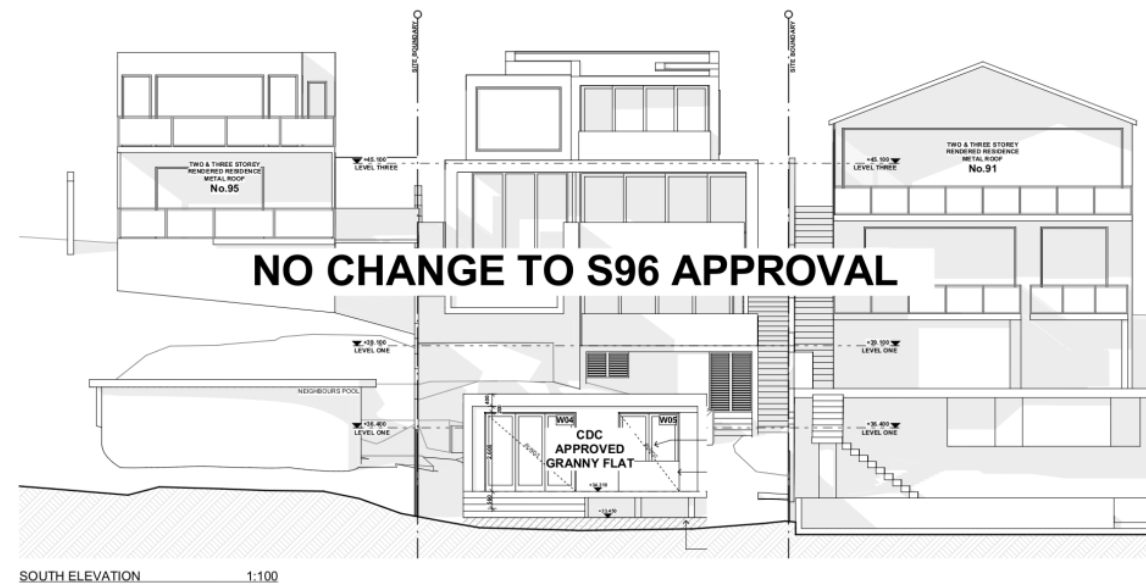
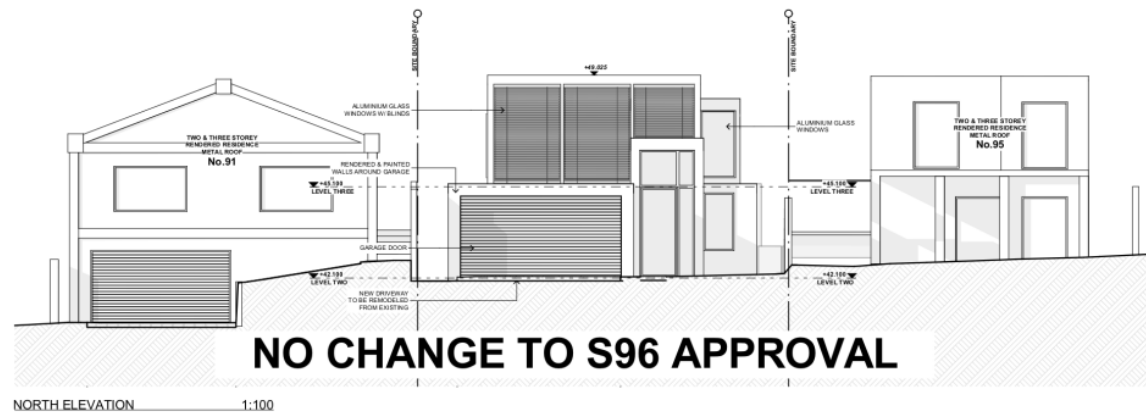


Date:		Issue:	Description:	Date:	Issue:	Description:	<p>The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.</p>		<p>GARTNER TROVATO ARCHITECTS</p>	Project: Alterations and Additions House 93 / Lot 4 Headland Road, North Curl Curl 2099	Client: Carol	Drawing: SECTION 4.55 Application 2020 SITE ANALYSIS	Drawn/Designed: LT	Date: JAN 2019	Scale: 1:100 @ (A2)
12.02.21	A	MODIFICATION APPLICATION													

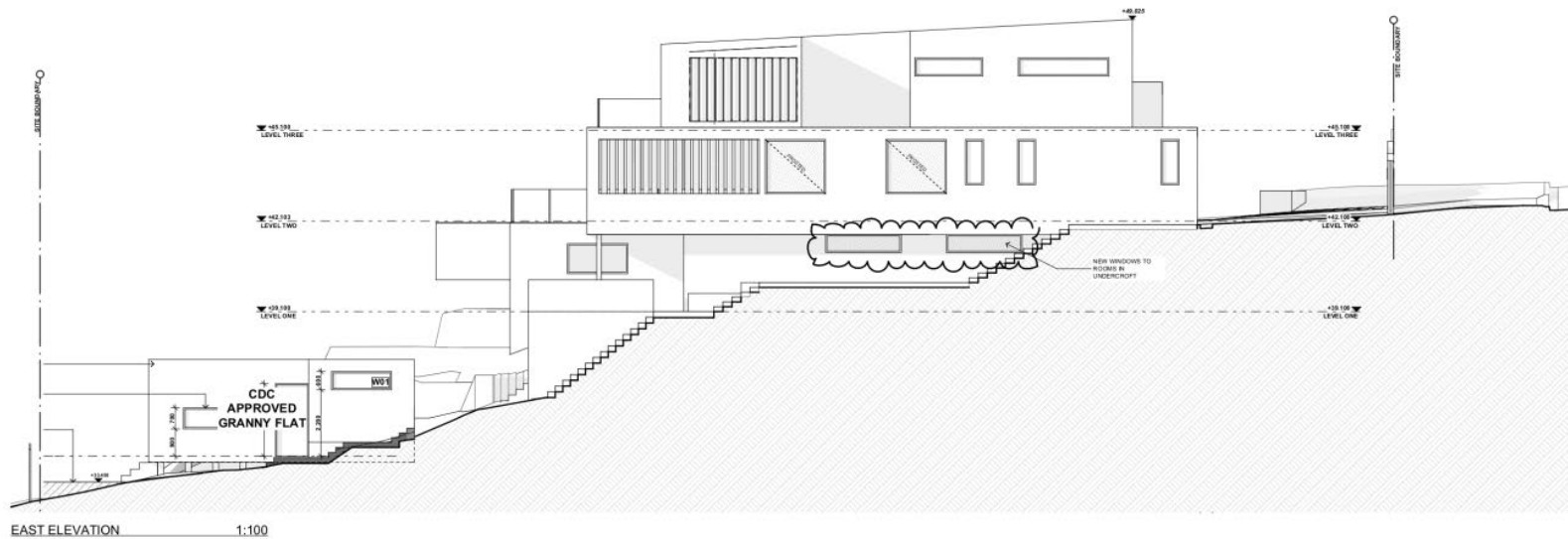




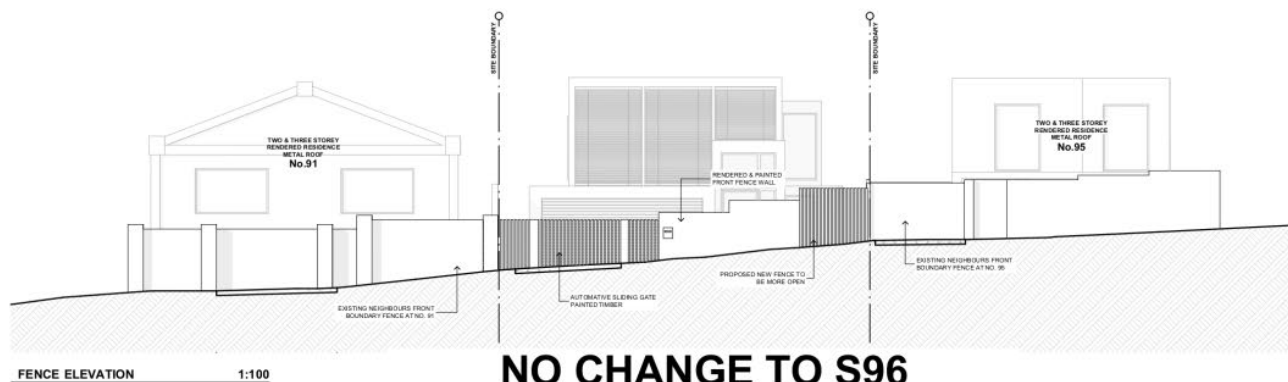
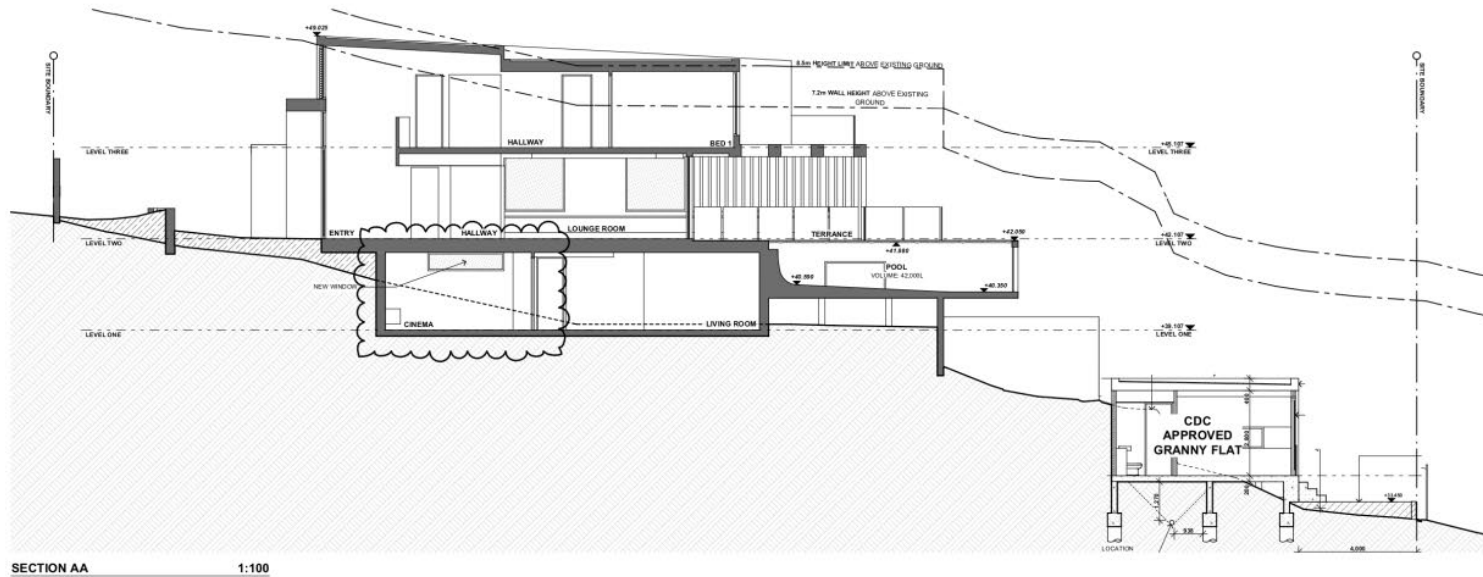
Date:	Issue:	Description:	Date:	Issue:	Description:	GARTNER TROVATO		Project:	Drawn/Designed:	LT	Date:	JAN 2019	
13.02.21	A	MODIFICATION APPLICATION			The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.			Alterations and Additions House 93 / Lot 4 Headland Road, North Curl Curl 2099	Project Number:	1537	Scale:	1:100 @ (A2)	
								Client:	Carroll				
								Drawing:	SECTION 4.55 Application 2020 LEVEL THREE & ROOF	Drawing No.:	A.04	Issue:	A



Date	Issue	Description	Date	Issue	Description	Project		Drawn/Designed	LT	Date	JAN 2019
15.02.21	A	MODIFICATION APPLICATION				Alterations and Additions House 93 / Lot 4 Headland Road, North Curl Curl 2099		Project Number	1537	Scale	1:100 @ (A2)
						Client		Carroll			
						Drawing		SECTION 4.55 Application 2020 NORTH & SOUTH ELEVATIONS	A.05	Issue	A



Date:		Issue:	Description:	Date:	Issue:	Description:	<p>The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.</p>		<p>GARTNER TROVATO</p> <p>A N I T I T I T I T I</p> <p>A 1700 HINDALE ROAD PO BOX 1150 HINDALE, NSW 2102 P 1512 5919 0411 F 1512 5919 0402 B1A0@G.T.COM.AU</p>	Project:	Alterations and Additions House 93 / Lot 4 Headland Road, North Curl Curl 2099		Drawn/Designed:	LT	Date:	JAN 2019		
12.02.21	A	MODIFICATION APPLICATION				Client:				Carroll	Project Number:	1537	Scale:	1:100 @ (A2)	Drawing No.:	A.06	Issue:	A
						Drawing:				SECTION 4.55 Application 2020 EAST & WEST ELEVATIONS								



**NO CHANGE TO S96
APPROVAL**

Date	Issue	Description	Date	Issue	Description	 GARTNER TROVATO ARCHITECTS 47-49 MONA VALLE ROAD MONA VALLE, NSW 2105 PH: 02 9478 4411 FX: 02 9478 4422 OFFICE: 02 9478 4423	Project	Drawn/Designed	LT	Date	JAN 2019	
12.02.21	A	MODIFICATION APPLICATION			The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.		Alterations and Additions House 93 / Lot 4 Headland Road, North Curl Curl 2099	Project Number:	1537	Scale:	1:100 @ (A2)	
							Client: Carroll	SECTION 4.55 Application 2020	Drawing No.:	A.07	Issue:	A
							Drawing:	SECTION A & FRONT FENCE DETAILS				