



## **Statement of Environmental Effects**

### **Section 4.55(1A) Modification Application**

### **Construction of a Single Storey Dwelling**

**Lot B / DP 419338  
11B Hill Street Warriewood  
NSW**

**Northern Beaches Council**

**Date: 6 May 2024  
Rev: 1**



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## 1. Background

On 18 October 2023 the Northern Beaches Council issued a deferred commencement consent for DA2023/0206 under Section 4.16(3) of the Environmental Planning Assessment Act 1979 for the construction of a single storey dwelling at 11B Hill Street Warriewood.

The deferred commencement condition was imposed by Council in the absence of owners consent and registration of a required easement into the existing inter-allotment drainage easement which travels through 13, 13A, 15 and 15A Hill Street. Evidence is required to be provided to Council of registration of the Easement under 88E or 88K of the Conveyancing Act 1919.

The deferred commencement condition read as followed:

### *1. Stormwater Drainage Easement*

*As this site is a low level property, disposal of stormwater drainage is to be via an inter-allotment drainage easement through the downstream properties of 13, 13A, 15 and 15A Hill Street, Warriewood. The inter-allotment drainage easement is to be in accordance with the stormwater drainage plans prepared by ALWDESIGN Civil Engineering Consultants, Drawing No. SW23273 – S1 to S3, Rev B, dated 5/09/2023. The easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of the created easement on title in order to activate the consent.*

*Stormwater drainage plans are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management Policy. Stormwater drainage plans are to include any required upgrades to the existing inter-allotment pipeline and hydraulic calculations demonstrating that the existing system can accommodate the additional flows from 11B Hill Street. Certification by an appropriately qualified Civil Engineer, who has membership to Engineers Australia, National Engineering Register (NER) or Professionals Australia (RPENG), is to be submitted to Council for written approval.*



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Under Section 4.16 (3) of the Environmental Planning Act 1979 modifications to Deferred Commencement Conditions are able to be sought by the consent authority and therefore this Statement of Environmental Effects has been prepared to request amendments to DA2023/0206 under Section 4.55(1A) of the Environmental Planning Assessment Act 1979.

FJA designs have been engaged by the owner to make a series of amendments to the original architectural plans as the owner has been unsuccessful in obtaining consent for the required easement for inter-allotment drainage through adjoining properties as required by the deferred commencement condition and therefore an alternate stormwater management design is required to provide a legal point of discharge to service the development.

This SEE describes the modification being sought and provides an assessment against the provisions of s 4.55(1A) of the EP&A Act and the requirements of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation). This SEE concludes that the amendments are minor, and that the development remains substantially the same as approved. On this basis, it is requested that Council, as the consent authority, modify the Consent as proposed.

## **2. Proposed Modification**

Section 4.55(1A) of the EP&A Act allows a consent authority, on application being made by an applicant or any other person entitled to act on a consent granted by the consent authority and in accordance with the EP&A Regulations, modify a development consent if the development remains substantially the same development as originally granted and the modifications sought are of minimal environmental impact.

### **2.1 – Details of the Modification**

The applicant has engaged FJA Designs to amend the deferred commencement approved plans to demonstrate a number of amendments to the proposal in the absence of being able to obtain owners consent and a legal point of discharge to an inter-allotment drainage



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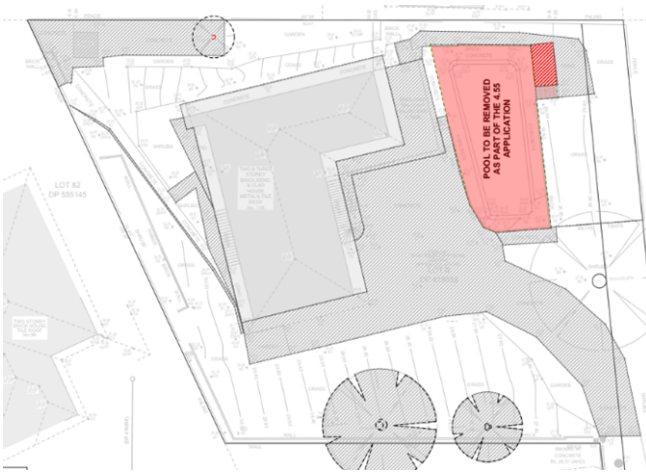


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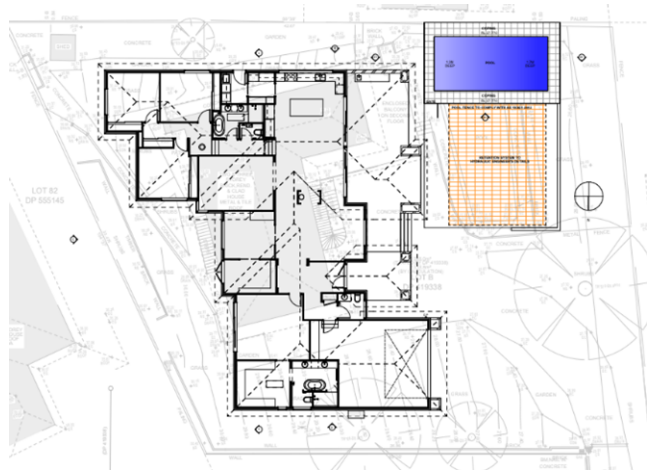
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system through adjoining properties. The proposed amendments sought are:

- Demolition of the existing pool
- Construction of an onsite-detention system in the location of the previous pool.
- Construction of a new pool in revised location.



Existing Pool Location



Modification Proposal

As demonstrated by the above images, the changes are wholly within the rear yard. The existing pool will be demolished to make way for an underground onsite stormwater detention system which has been designed in accordance with Council's Engineering Specifications. A new pool 8.2m x 4m is proposed to be constructed running parallel across the rear boundary of the site whilst the proposed dwelling remains unchanged.

The amendments proposed do not result in any significant change or loss to visual or acoustic privacy from adjoining properties and therefore no environmental impacts as a result.

The proposed pool is consistent with the SEPP Exempt & Complying Development 2008 and Pittwater DCP requirement being a minimum of 1m from any property boundary to the coping.



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## **2.2 – Conditions to be Modified**

The proposed modifications will result in Condition 1 Deferred Commencement (Stormwater Drainage Easement) being deleted and Condition 2 General Conditions (Approved Plans and Supporting Documentation being amended to reflect the revised architectural drawings and references.

## **3. Assessment against Section 4.55(1A)**

Section 4.55(1A) of the EP&A Act contains the provisions that must be considered by Council in determining an application to modify a consent. This application is lodged under Section 4.55(1A) which enables Council to modify the consent with other modifications.

- (1A) Modifications involving minimal environmental impact 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
  - (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
  - (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 that requires the notification or advertising of applications for modification of a development consent,



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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.

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
- (6) Deemed refusals The regulations may make provision for or with respect to the following:
  - (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,
  - (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,
  - (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.

(6A), (7) (Repealed)



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- (8) Modifications by the Court The provisions of this section extend, subject to the regulations, to enable the Court to modify a consent granted by it but, in the extension of those provisions, the functions imposed on a consent authority under subsection (1A)(c) or subsection (2)(b) and (c) are to be exercised by the relevant consent authority and not the Court.

**Comment:**

The proposed amendments seek to demolish the existing pool to allow for an underground onsite stormwater detention tank to be built and construction of a new pool in a revised location. The proposed pool and OSD system do not create any non-compliances with respect to the DCP nor do they create any additional environmental impacts to adjoining properties considered by the previous development application.

The amendments proposed are considered to be substantially the same development as approved by deferred commencement consent, meaning the development is consistent with the provisions of Section 4.55(1A) of the act.

#### **4. Assessment - Section 4.15 (1)**

In determining an application for the modification of a consent pursuant to section 4.55(1A), 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, as well as take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

#### **4.1 – Section 4.55(1)(a)(i) – Environmental Planning Instruments**

This application has been assessed against the relevant provision of the EP&A Act, the EP&A Regulation, the provisions of Pittwater Local Environmental Plan 2014 and supporting Pittwater Development Control Plan 2014. As detailed within this letter, the proposal has been found to comply with all relevant provisions and would not trigger any additional matters for consideration.



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#### **4.2 – Pittwater Local Environmental Plan 2014**

The site is zoned C4 Environmental Living under Pittwater LEP 2014. The proposed amendments do not result in changes to the assessment framework or provisions relevant to the development under the LEP. No changes are proposed to the approved development footprint which would necessitate a further detailed assessment under the LEP.

#### **4.3 – Pittwater Development Control Plan No.21**

The proposal is consistent with the statutory controls of the Pittwater Development Control Plan 2014. The dwelling includes no changes under the subject modification application, built form changes are contained to the reconstructed pool in the rear southern portion of the lot. To ensure compliance with the DCP is achieved, the pool demonstrates a minimum 1m from all adjoining property boundaries to the coping.

The pool has been positioned to ensure that a 3.6m setback to the western boundary is achieved which follows the east to west fall of the site to ensure that the finished floor level of the pool area does not result in privacy impacts to 13 Hill Street Warriewood.

#### **4.4 – Section 4.15(a)(iia) – Regulations**

Relevant provisions pursuant to the Regulations are separately addressed above.

#### **4.5 – Section 4.15(1)(b) – Impacts of the Development**

This section 4.55(1A) application proposes to modify the previously approved alterations and additions to the existing single storey dwelling. It does not result in any change to matters for consideration under the previous assessment and will not have any adverse environmental, social or economic impacts to the locality.



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#### **4.6 – Section 4.15(1)(c) – Suitability of the Site**

The site is zoned C4 Environmental Living under Pittwater Local Environmental Plan 2014, and the issuing of the consent confirmed that the site is suitable for the proposed development. This modification does not alter that position and the development is considered to be substantially the same as originally approved.

#### **4.7 – Section 4.15(1)(d) – Submissions**

The proposed modification is minor and is not considered to warrant notification noting that the amendments to the development are substantially the same as previously approved. These amendments are unlikely to have any adverse impacts on adjoining properties. However, if Council elects to notify the application, the applicant requests the opportunity to respond to any submissions received.

#### **4.8 – Section 4.15(1)(e) – The Public Interest**

The proposed modification to modify the approved dwelling is in the public interest for the following reasons:

- The modification will increase the amenity and livability of the home for the residents without impacting adjoining properties.
- The modification delivers a dwelling that accommodates a building design that is compatible within a residential environment.
- The modification is consistent with the aims and objectives of the EP&A Act, Regulations, Pittwater LEP and Pittwater DCP.



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## 5. Conclusion

It is requested that the Northern Beaches Council issue a modification to DA2023/0206 which will also satisfy Clause 4.16(3) of the Environmental Planning Assessment Act 1979 and allow for operational consent to be granted as it achieves the intent of Deferred Commencement Condition 1 of the consent.

As detailed in the Statement of Environmental Effects above, the proposed amendments satisfy the previous reasons for deferred commencement consent being imposed in the absence of a legal point of discharge through downstream properties. The amendments to the sites proposed stormwater management plan should be considered acceptable by Council to service the proposed dwelling and inground pool.

The revised pool design and location has been considered against the requirements for ancillary development against the Pittwater DCP No 21. The proposed setbacks from adjoining properties and finished floor levels will not result in any compromising the privacy or amenity of adjoining properties.

The modification has been assessed against the requirements of the EP&A Act and the EP&A Regulations and has been found to have minor environmental impacts, is substantially the same development and is also consistent with the granting of the original determination.

Therefore, it is considered the modification application is consistent with the relevant planning controls as well as being satisfactory in terms of environmental impacts. This application to modify the Consent should be supported by Council.

**Sincerely,**

**Mitch Anderson**

Director



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