

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0412
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 46 DP 13620, 967 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent N0272/16 granted for Demolition of existing dwelling house and construction of a new dwelling house and swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	SMJ Investments Pty Ltd
Applicant:	Blue Sky Building Designs Pty Ltd

Application Lodged:	03/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/09/2020 to 24/09/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The *Environmental Planning and Assessment Act 1979, Section 4.55(1A) Modifications involving minimal environmental impact* allows applications to be made seeking consent to modify the original consent where the works are considered to be substantially the same as previously approved. As such, this application seeks consent to modify N0272/16 for alterations and additions to an existing residential dwelling, including:

- New timber deck located along the eastern side of the approved swimming pool.
- Minor modification to the approved shape of the swimming pool.
- Addition of a spa in the north-eastern corner of the approved swimming pool.
- Amendments to the design of the approved retaining walls (creating a curvature), within the foreshore area.
- Excavation beneath the approved swimming pool.

- External stairs from pool level to the lower yard level.

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

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 46 DP 13620 , 967 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Barrenjoey Road.</p> <p>The site is irregular in shape, with a frontage of 24.38m along Barrenjoey Road, and a maximum depth of 41.32m. The site has a surveyed area of 727.1m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a partially constructed single dwelling (pursuant to consent N0272/16 and Mod2018/0387), a timber boatshed is located within the foreshore area along Pittwater Waterway.</p> <p>The site has a slope of approximately 43.3%, and falls from the road frontage (east) toward the Pittwater Waterway (west).</p>

The site is currently under construction, as such, there are no significant or threatened species on site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar low density residential dwellings, some with swimming pools, along Pittwater Waterway.

Map:



SITE HISTORY

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

- Development Application (N0597/07) was submitted to Council for the demolition of an existing garage structure. This application was approved, subject to conditions.
- Development Application (N0086/09) was submitted to Council for the demolition of existing dwelling and construction of a new dwelling. This application was approved, subject to conditions.
- Development Application (N0389/13) was submitted to Council for the construction of a new dwelling and waterfront facilities at 967 Barrenjoey Road, construction of new waterfront facilities at 969 Barrenjoey Road and a boundary adjustment between the two sites. This application was refused.
- Development Application (N0272/16) was submitted to Council for the demolition of existing dwelling and construction of a new dwelling, with a swimming pool and associated decking. This application was approved, subject to conditions.

- Modification Application (Mod2018/0387) was submitted to Council to modify consent N0272/16. This application was approved, subject to conditions.

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 N0272/16 and Mod2018/0387 and subsequently modified under Mod2018/0387 in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>This application seeks consent for minor external works, which include: the addition of a spa within the approved swimming pool, timber deck to the eastern side of the swimming pool, minor design changes to the previously approved retaining walls, and the construction of external stairs from the pool level to the lower lawn level.</p> <p>Council's Development Engineer and Coast and Catchments Officer have reviewed this application and raised no concern with regards to the proposed amendments in relation to the Geotechnical Hazards of the site, and the Coastal Management SEPP. As such, Council can be satisfied that the proposed modifications will be of a minimal environmental impact.</p>
(b) it is satisfied that the development to which the consent as modified relates is	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 N0272/16 and

Section 4.55(1A) - Other Modifications	Comments
<p>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>	<p>Mod2018/0387 for the following reasons:</p> <p>The original DA, being N0272/16 proposed to demolish the existing dwelling and rebuild a two (2) storey residential dwelling within a landscaped setting, including the construction of a swimming pool and associated decking and landscaped works.</p> <p>The first modification, being Mod2018/0387, sought consent for minor alterations to the previously approved consent to include the following: reorientation of the swimming pool, reduction of internal living space, reduction of the ground floor patio and reduce the patio roof, and the erection of a waterfront equipment storage facility.</p> <p>The current modification is seeking consent for minor alterations and additions to the previously approved consent under N0272/16 and Mod2018/0387 to include: a spa within the previously approved swimming pool, a new timber deck to the east of the approved swimming pool, minor modification to the shape of the approved swimming pool, additional excavation beneath the approved swimming pool, amendments to the design of the approved retaining walls to create a curvature, and external stairs located toward the southern end of the pool to facilitate access from the pool level to the lower lawn level.</p> <p>Council can be satisfied that the proposed modified works under this application are substantially the same to that which was previously approved.</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, Pittwater Local Environment Plan 2014 and Pittwater 21 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</p>	<p>No submissions were received in relation to this application.</p>

Section 4.55(1A) - Other Modifications	Comments
case may be.	

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – 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>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>relevant to this application.</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 Pittwater 21 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> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

The original Development Application (being N0272/16) included a Bushfire Report, which included a Bushfire Certificate, prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 7 March 2016). This report stated that the development conforms to the relevant specifications and requirements within Planning for Bushfire Protection. The recommendations of the Bushfire Report were included within the original consent, and these conditions remain and must be complied with (specifically

condition B6 of N0272/16).

A letter from Building Code & Bushfire Hazard Solution Pty Limited was provided for the previous modification application (being Mod2018/0387), dated 2 July 2018, stating that they were satisfied that the proposed modified works to N0272/16 did not alter their findings and/or recommendations made within the Bushfire Hazard Assessment Report that was originally submitted with N0272/16.

No addendum letter was received under this current application. However, the original Bushfire Report was provided. This application was referred to the NSW RFS for comment. Comments were received on 25 September 2020, which included recommended conditions which have been included within the consent for this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/09/2020 to 24/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>The Modification Application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed modification is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Proximity to Littoral Rainforest Area', 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 11, 13, 14 and 15 of the CM SEPP apply for this DA.</p>

Internal Referral Body	Comments
	<p>Comment:</p> <p>On internal assessment and, the Modification Application satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Assessments to requirements under Clause 11 will be made by other section of the Council.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Hazard Mapping The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>On internal assessment , the ground floor level for the proposed alterations is above the applicable Estuarine Planning Level (EPL) for the site.</p> <p>Hence, the proposed modifications are therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The Modification Application proposes works on variation to pool, inclusion of spa, retaining wall variation, access stairs relocation. These proposed works are consistent with Clause 7.8(2)(b).</p>

Internal Referral Body	Comments
	On internal assessment, the Modification Application satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Development Engineering)	No Development Engineering objection without conditions.

External Referral Body	Comments
NSW Rural Fire Service – local branch (s4.14 EPAA)	The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and has provided recommended conditions of consent which will be included within this consent.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p> <p>If you have any queries, please contact Susan Whitby on 0435 643 205.</p>

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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

This Clause is not relevant to the subject site.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

This Clause is relevant to the subject site. Council's Coast and Catchment Officer has reviewed this application and raised no objection to the proposed modified works being located on land within proximity to coastal wetlands or the littoral rainforest.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures*

are in
place
to
ensure
that
there
are
appropriate
responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.

Comment:

This Clause is not relevant to the subject site.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

This Clause is relevant to the subject site. Council's Coast and Catchments Officer has reviewed this application and raised no objection to the proposed modified works being within the coastal environment area.

- (2) *Development consent must not be granted to development on land to which this clause applies*

unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

This Clause is relevant to the subject site. Council's Coast and Catchments Officer has reviewed this application and raised no objection to the proposed modified works being within the coastal environment area.

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

This Clause is relevant to the subject site. Council's Coast and Catchments Officer has reviewed this application and raised no objection to the proposed modified works being within the coastal use area.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

This Clause is relevant to the subject site. Council's Coast and Catchments Officer has reviewed this application and have raised no objection to the proposed modified works. As such, the proposal is unlikely to increase the risk of coastal hazards.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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	6.6m (approx.)	Unchanged	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No

Detailed Assessment

7.8 Limited development on foreshore area

The proposed modification includes the following works within the foreshore area:

- Excavation works beneath the approved swimming pool
- Minor amendments to the southern end of the swimming pool to accommodate space for external stairs.
- External stairs to facilitate access from the pool level to the lower lawn level.
- Redesign of previously approved retaining walls (creating a curvature).

Development consent can only be granted to this type of development where Council is convinced that the assessment criteria as listed under Clause 7.8(3) and (4) can be satisfied.

The assessment of Clause 7.8 is as follows:

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that:

(a) the development will contribute to achieving the objectives for the zone in which the land is

Comment:

The proposed modified works are generally minor in nature. The previously approved landscape

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore

Comment:

As discussed above, the previously approved landscape plan is not proposed to be amended

(c) the development will not cause environmental harm such as:

(i) pollution or siltation of the waterway, or

(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and

(iii) an adverse effect on drainage patterns, or

(iv) the removal or disturbance of remnant riparian vegetation, and

Comment:

Council's Development Engineer and Coast and Catchment Officer have both reviewed this

(d) the development will not cause congestion or generate conflict between people using open

Comment:

The proposed modified works are located centrally within the subject site. As such, there will be

(e) opportunities to provide continuous public access along the foreshore and to the waterway

Comment:

As discussed above, as a result of the proposed modified works, there will be no impact upon

(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic signifi-

Comment:

The proposed modified works will not impact upon the historic, scientific, cultural, social, archa-

(g) in the case of development for the alteration or rebuilding of an existing building wholly or p-

Comment:

The proposed modified works, including a portion of the external stairs and the redesign of the

(h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of c-

Comment:

Council's Coast and Catchment Officer has reviewed this application and raised no concern re

(4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether, and to what extent, the development would encourage the following:

(a) continuous public access to and along the foreshore through or adjacent to the proposed

Comment:

As discussed above, the proposed modified works are centrally located within the subject site,

(b) public access to link with existing or proposed open space,

Comment:

Currently, there is no link to public opens space areas on either side of the subject site. The pr

(c) public access to be secured by appropriate covenants, agreements or other instruments

Comment:

As discussed above, there is no link to public open space areas on either side of the subject si

(d) public access to be located above mean high water mark,

Comment:

As discussed above, there is no link to public open space areas on either side of the subject si
proposed modification is not seeking to amend this.

(e) the reinforcing of the foreshore character and respect for existing environmental conditions

Comment:

As discussed, the proposed modified works are located centrally within the subject site. These
works are minor in nature involving minimal environmental impacts and a minor built form.

As previously discussed, the approved landscape plan will reasonably screen the built form
when viewed from the foreshore area and adjoining properties.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	15m	16.9m - 17.9m	Yes
Rear building line	FBL applies	N/A	unaltered	N/A
Side building line	2.5m (northern boundary)	1.1m	2.0m	No
	1m (southern boundary)	1.6m	4.3	Yes
Building envelope	3.5m (northern elevation)	Within envelope	Within envelope	Yes
	3.5m (southern elevation)	Outside envelope	Within envelope	Yes
Landscaped area	60%	67.6%	55.8%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes
D15.22 Masterplan - Careel Bay	Yes	Yes

Detailed Assessment

D12.6 Side and rear building line

Detailed Description of Non-compliance

The subject site is bound by the Foreshore Building Line. As such, the rear setback requirements do not apply in this instance. A discussion on works within the foreshore area can be found under section 7.8 Limited Development on Foreshore Area.

This control requires development to be setback from the side boundaries by the following minimum requirements: 1.0m on one side and 2.5m on the other side. The previous development application and subsequent modification application determined the northern side boundary to achieve compliance with 2.5m minimum requirement, and the southern side boundary to achieve compliance with the 1.0m minimum requirement.

The proposed spa will result in a northern side setback of 2.0m. This presents a variation of 20%. The proposed external stair will result in a southern side setback of 4.3m. Thus, achieving compliance.

For swimming pools and spas a 1 metre minimum setback from the boundary to the pool coping may be permitted subject to the following:

- *satisfactory landscaping within the setback from the pool or spa coping to the side or rear boundary, and*

Comment:

The previously approved landscape plan depicts sufficient space within the setback area to facilitate screen planting. Thus, ensuring a reasonable degree of privacy for the occupants of the subject site and those of adjoining properties.

- *Council is satisfied that the adjoining properties will not be adversely affected, and*

Comment:

Council is satisfied that the addition of a spa within the previously approved swimming pool will not adversely affect the adjoining property, being 969 Barrenjoey Road, Palm Beach.

- *the pool or spa is not more than 1 metre above ground level (existing), and*

Comment:

The spa will be located approximately 1.4m above the ground level (existing). However, the steep slope of the land (exceeding a 30% slope), means that most development will be located above the ground level so as to minimise the need for substantial excavating. It should be noted that the proposed spa will be sited within the previously approved swimming pool, thus achieving the same levels of the swimming pool.

- *that the outcomes of this clause are achieved without strict adherence to the standards, and*

Comment:

Notwithstanding the non-compliance to this control, the proposed modified works can achieve the outcomes of this clause - as discussed in detail below.

- *where the site constraints make strict adherence to the setback impractical, and*

Comment:

As discussed above, the subject site is located on a slope which exceeds 30%. As such, compliance with such controls would require substantial excavation works to accommodate the proposed works, which is generally discouraged. Further, the proposed spa will be sited within the previously approved swimming pool.

- *where strict compliance with these requirements will adversely impact on the views of adjoining residential properties.*

Comment:

Although strict compliance with the 2.5m side setback requirement would not adversely impact upon the views of adjoining residential properties, achieving compliance would not be possible as the proposed spa is sited within the approved swimming pool. It should be noted, however, that due to the steep topography of the subject site and adjoining properties, the siting of the adjoining dwelling (being 969 Barrenjoey Road, Palm Beach) sits substantially higher than the location of the approved swimming pool and proposed spa. As such, the location of the proposed spa, while numerically non-compliant, will unlikely impact upon the views of adjoining properties.

The application is considered against the objectives of this control as follows:

Merit Consideration

To achieve the desired future character of the Locality.

Comment:

Under A4.12 Palm Beach locality of the P21 DCP, the proposed modified works are consistent with the objectives of the desired character of Palm Beach. The proposal will achieve a height that is well below the height of existing canopy trees. Further, no native vegetation is proposed to be removed as a result of the proposed modified works. The bulk and scale of the proposal is minor in nature and is unlikely to impact upon the amenity of the adjoining properties.

The bulk and scale of the built form is minimised.

Comment:

The proposed modified works are generally of minimal bulk and scale. The previously approved landscape plan, once completed, will provide visual relief of the built form when viewed from public places and adjoining properties, particularly the property to the north (being 969 Barrenjoey Road, Palm Beach).

Equitable preservation of views and vistas to and/or from public/private places.

Comment:

The proposed modified works are unlikely to impact upon the views and vistas to and/or from public/private places.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment:

The siting of the proposed modified works generally step with the steep topography of the site, resulting in a built form that does not exceed an unreasonable height. As such, the proposed modified works result in a responsive design that does not interfere with the position of the previously approved landscaping plan.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment:

The proposal will ensure a reasonable level of privacy, amenity and solar access is provided for the occupants of the subject site and those of adjoining properties in that the previously approved landscape plan will provide an adequate degree of privacy for the occupants when using the outdoor facilities (such as the pool, proposed spa and decking area).

Substantial landscaping, a mature tree canopy and an attractive streetscape.

Comment:

This application does not propose to amend the previously approved landscape plan. As such, the landscaping will remain substantial, inclusive of canopy trees. The modified works are located centrally within the site, thus not impact upon the existing streetscape.

Flexibility in the siting of buildings and access.

Comment:

The proposed modified works are centrally sited within the subject site, ensuring a reasonable degree of amenity can be maintained for the occupants of the dwelling and those of adjoining properties. Access to the subject site will remain.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:

As discussed, the site is currently under construction and there is no vegetation on the site. However, the previously approved landscape plan remains unchanged. Once completed, the landscaping elements will visually reduce the built form when viewed from public places and adjoining properties.

To ensure a landscaped buffer between commercial and residential zones is established.

Comment:

The subject site is located within, and surrounded by, residential zones. As such, this objective does not apply to the subject site.

While the proposal is numerically non-compliant, it is considered to be consistent with the underlying objectives of the control, and is therefore supported on merit.

D12.10 Landscaped Area - Environmentally Sensitive Land

Detailed Description of Non-compliance

The subject site is located within Area 1 of the Landscaped Area Map, therefore the site requires a minimum of 60% landscaped area. The proposed modification results in a numerically non-compliant landscaped area of 55.8%; this represents a variation of 7%. Provided the outcomes of the control can be achieved, a variation may be permitted which allows pathways (and the like) of 1m width or less, and 6% of the total site to be included in the overall landscaped proportion of the site. With the variations applied, the proposed landscaped area is increased to 61.8%, thus achieving numerical compliance.

The application is considered against the objectives of this control as follows:

Merit Consideration

To achieve the desired future character of the Locality.

Comment:

Under A4.12 Palm Beach Locality of the P21 DCP, the proposal is consistent with the objectives of the desired future character of Palm Beach. The proposal will achieve a height that is well below the existing tree canopy. Furthermore, no native vegetation is proposed to be removed as a result of the development. The bulk and scale of the development is minor in nature, and is unlikely to impact upon the amenity of the adjoining properties.

The bulk and scale of the built form is minimised.

Comment:

The proposed modified works are generally of minimal bulk and scale. The previously approved landscape plan, once completed, will provide visual relief of the built form when viewed from public places and adjoining properties.

A reasonable level of amenity and solar access is provided and maintained.

Comment:

The proposal will ensure a reasonable level of privacy, amenity and solar access is provided for the occupants of the subject site and those of adjoining properties in that the previously approved

landscape plan will provide an adequate degree of privacy for the occupants when using the outdoor facilities (such as the pool, proposed spa and decking area).

Vegetation is retained and enhanced to visually reduce the built form.

Comment:

As discussed, the site is currently under construction and there is no vegetation on the site. However, the previously approved landscape plan remains unchanged. Once completed, the landscaping elements will visually reduce the built form when viewed from public places and adjoining properties.

Conservation of natural vegetation and biodiversity.

Comment:

The proposed modified works do not involve amendments to the previously approved landscape plan. While the site is currently under construction, compliance with the previously approved landscape plan will ensure that natural vegetation and biodiversity will be conserved for the life of the development.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment:

Council's Development Engineer has reviewed this application and raised no objection to the proposed development, nor have any additional conditions been included. Any previous conditions relating to stormwater management remain and must be complied with. Council's Coast and Catchment's officer has reviewed this application and included relevant conditions to ensure soil erosion and siltation (if any) is contained wholly within the site so as not to seep into natural drainage channels.

To preserve and enhance the rural and bushland character of the area.

Comment:

As discussed, the site is currently under construction and any existing vegetation has been removed to facilitate construction works. As discussed, the previously approved landscape plan will ensure the site preserves and enhances the rural and bushland character of the area.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment:

While the site results in a numerically non-compliant landscaped area, the retention of pervious areas throughout the site will allow for the infiltration of water to the water table, thus minimising run-off. As discussed above, Council's Development Engineer has reviewed this application and raised no issue with the modified works, nor were additional conditions of consent included. As such, any previous conditions relating to stormwater management remain and must be adhered to.

While numerically non-compliant, the proposed modified works will, with the variation applied, achieve compliance with this control. As such, the modified works remain consistent within the locality and, in this instance, can be supported on merit.

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0412 for Modification of Development Consent N0272/16 granted for Demolition of existing dwelling house and construction of a new dwelling house and swimming pool on land at Lot 46 DP 13620,967 Barrenjoey Road, PALM BEACH, 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


Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
CC102 Site Plan	21 August 2020	Blue Sky Building Designs
CC103 Pool Amenities Level	21 August 2020	Blue Sky Building Designs
CC104 Pool Plan	21 August 2020	Blue Sky Building Designs
CC105 Ground Floor Plan	21 August 2020	Blue Sky Building Designs
CC106 First Floor & Section A	21 August 2020	Blue Sky Building Designs
CC107 South & East Elevations	21 August 2020	Blue Sky Building Designs
CC108 North Elevation	21 August 2020	Blue Sky Building Designs
CC109 West Elevation	21 August 2020	Blue Sky Building Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Comment	27 August 2020	Douglas Partners
Bushfire Risk Assessment Report	7 March 2016	Building Code & Bushfire Hazard Solutions Pty Limited

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Signed



Megan Surtees, Planner

The application is determined on 27/10/2020, under the delegated authority of:



Rodney Piggott, Manager Development Assessments