

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0188
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 30 DP 13686, 888 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2021/0657 granted for alterations and additions to a dwelling house including swimming pool and garage
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Lisa Maria Keighery
Applicant:	Lisa Maria Keighery
Application Lodged:	05/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	16/05/2022 to 30/05/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify the existing consent for alterations and additions to the existing dwelling granted under DA2021/0657. In detail, this involves:

- Deletion of approved pool
- A new spa to replace the deleted pool
- Retention of existing retaining walls
- Deletion of of stairs and retaining wall along southern boundary
- Retention of existing stairs on southern boundary
- New pergola to replace existing pergola
- New stairs to terrace
- New wall to eastern side of terrace
- Increase in the level of the terrace from RL29.77 to RL30.25

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

SITE DESCRIPTION

Property Description:	Lot 30 DP 13686 , 888 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of an allotment located on the eastern side of Barrenjoey Road.</p> <p>The site is irregular in shape with a frontage of 15.7m along Barrenjoey Road and a depth of 62.7m-68.9m. The site has a surveyed area of 1003m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a dwelling house.</p> <p>The site is steeply sloped at the rear and contains dense vegetation in this area.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development.</p>

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:

- N0297/12 - Alterations and additions to the existing dwelling and a new swimming pool approved 6/02/2013.
- DA2018/0739 - Alterations and additions to a dwelling house including new driveway and landscaping approved on 14 February 2019.
- DA2021/0657 - Alterations and additions to a dwelling house including swimming pool and garage. This is the consent that is subject of this modification.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2022/0494, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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>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 DA2022/0494 for the following reasons:</p> <p>The proposal involves minor changes including retention of existing features on site and deletion of features under the previous application. The works would result in a similar visual presentation and bulk, and maintains the use as a dwelling house</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2022/0494 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(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.	No submissions were received in relation to this application.

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 96 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 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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 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
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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.

A Bush Fire Report was submitted with the application (prepared by Bush Fire Planning Services, dated 13 May 2021). The report stated that the bushfire attack level of the site is “Flame Zone” and the report recommended an alternative solution to comply with Planning for Bush Fire Protection.

A further Bushfire letter was submitted with this modification application, dated 29 March 2022.

The application (including further letter) was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/05/2022 to 30/05/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2021/0657 as described and illustrated in the reports and plans.

Internal Referral Body	Comments
	<p>The landscape outcomes as approved in the development consent are not altered by the modification proposal and Landscape Referral raise no objections.</p> <p>The landscape conditions under development consent DA2021/0657 remain including the following conditions to be satisfied prior to the issue of the construction certificate: Conditions 7. On Slab Landscape Works; and 10. Amendment of Landscape Plans, requiring the provision of at least 80% of any new planting incorporates species listed within the Pittwater Spotted Gum Forest; and the following other Conditions for site works: 16. Project Arborist; 20. Protection of Rock and Sites of Significance; 21. Protection of Existing Street Trees; 22. Tree and Vegetation Protection; 29. Landscape Completion; 30. Condition of Retained Vegetation - Project Arborist; and 37. Landscape Maintenance.</p>
NECC (Bushland and Biodiversity)	<p>The application is for modification to development consent DA2021/0657 as described and illustrated in the reports and plans. The amended design does not require the removal of prescribed vegetation, nor is the approved asset protection zone increased or amended by the design. On this basis, no objection is raised, subject to the biodiversity conditions provided under the development consent DA2021/0657:</p> <ul style="list-style-type: none"> • Condition 10. Amendment of Landscape Plans, • Condition 17. Protection of Habitat Features • Condition 18. Clearing for Asset Protection Zones • Condition 33. No weeds imported on to the site • Condition 38. Control of domestic dogs/cats
NECC (Coast and Catchments)	No additional conditions or comments from Coastal Team
NECC (Development Engineering)	Applicant seeks approval for changes to the outdoor living spaces and deletion of swimming pool. No Development Engineering objection with no conditions.
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>The proposed development, which drains to the Pittwater Estuary, must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to Pittwater.</p> <p>Therefore, sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. The proposal, subject to conditions, is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological</p>

Internal Referral Body	Comments
	environment of Pittwater and its surroundings if conditions are adhered to.

External Referral Body	Comments
NSW Rural Fire Service – local branch (s4.14 EPAA)	A letter has been provided by the NSW Rural Fire Service with recommended conditions. These conditions are adopted and the letter is included as a reference document in the conditions of consent.

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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 original application was referred to Ausgrid who raised no objections.

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	3.4m (garage)	3.4m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	1.25m	1.25m / unaltered	No/ unaltered
Side building line	2.5m	6.8m (garage)	6.8m / unaltered	Yes
	1m	1m	0.9m	No (see comments)
Building envelope	3.5m	Within	Within/Outside envelope / unaltered	Yes
	3.5m	Within	Within/Outside envelope / unaltered	Yes
Landscaped area	60%	60%	60% / unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.6 Side and rear building line

Description of non-compliance

The proposed development does not comply with the requirement for side building line (2.5m and 1m). The proposal involves new pergola area to a setback of 0.9m.

The approved garage remains compliant with a setback of 6.8m and 1m.

Merit consideration

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

To achieve the desired future character of the Locality.

The proposal maintains landscaping at the front of the site, and also has a relatively large landscaped road reserve. Along with the significant setback to the dwelling, and the open nature of the terrace and pergola area at the rear, this provides a situation in which the proposal will meet the desired future character.

The bulk and scale of the built form is minimised.

The proposed height of the development complies with the development standard, and the articulation at the rear provides a reasonable openness so as to not have any unreasonable impact on amenity or visual presentation to the street. Additionally, the maintenance of trees further screens the presentation of bulk.

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

The proposed development is adequately designed and sited so as to preserve views and vistas to and from the subject site and adjacent sites. This includes corridors to the sides and rear of the development that adequately preserve views and vistas.

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

The proposed development is adequately designed and sited so as to preserve views and vistas to and from the subject site and adjacent sites. This includes an appropriate building height and sufficient side front and rear setbacks that allow for reasonable retention of views corridors through the site.

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

The proposed development is sufficiently separated and screened from living areas and private open space of neighbouring properties so as to ensure a reasonable level of privacy, amenity and solar access is provided. The proposal also complies with the requirements for Solar Access under the Pittwater DCP.

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

The proposed development includes suitable vegetation in the front and rear yards, and maintains street vegetation to provide an appropriate outcome for the streetscape.

Flexibility in the siting of buildings and access.

The proposed development is adequately sited to ensure a reasonable level of amenity and a reasonable visual presentation for the subject site and adjacent sites.

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

The site maintains adequate vegetation as well as street trees to the front and rear yards in order to reduce the visual impact of the proposed additions.

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

Not applicable. The subject site does not adjoin commercially-zoned land.

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 2021

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. Mod2022/0188 for Modification of Development Consent DA2021/0657 granted for alterations and additions to a dwelling house including swimming pool and garage on land at Lot 30 DP 13686,888 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
S4.55_1.0 - Site Plan	17.03.2022	Wyer & Co
S4.55_5.0 - Proposed Lower Ground and Ground Floor Plan	17.03.2022	Wyer & Co
S4.55_5.2 - Proposed Ground Floor Plan	17.03.2022	Wyer & Co
S4.55_7.1 - Proposed Ground Floor Plan	17.03.2022	Wyer & Co
S4.55_7.2 -Elevation/ Section	17.03.2022	Wyer & Co

Engineering Plans		
Drawing No.	Dated	Prepared By
H01-H03 - Stormwater Plans	18/3/2022	Heinz

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Letter of alterations to DA plans	25 March 2022	Alliance
Bushfire Letter	29 March 2022	Bush Fire Planning Services

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

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

B. Amend Condition No.2 - Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service**TRIM**

NSW Rural Fire Service

RFS F

NSW Rural Fire Service

NSW F

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

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

Signed**Thomas Prosser, Planner**

The application is determined on 08/06/2022, under the delegated authority of:

**Steven Findlay, Manager Development Assessments**