

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0334
<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 70 DP 11067, 32 The Strand WHALE BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0913 granted for demolition works and construction of a dwelling house including a swimming pool
<b>Zoning:</b>	E4 Environmental Living RE1 Public Recreation
<b>Development Permissible:</b>	Yes - Zone RE1 Public Recreation Yes - Zone E4 Environmental Living
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Robert Alfred Kenneth Nugan
<b>Applicant:</b>	Robert Alfred Kenneth Nugan Susan Nugan

<b>Application Lodged:</b>	28/07/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	06/08/2020 to 20/08/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks the modification of Development Consent DA2019/0913 granted for demolition works and construction of a dwelling house including a swimming pool.

In particular, the works include:

1. Typical to all external areas: stone floor paving substituted for conventional shaped natural stone tile.
2. Typical to all internal areas: stone floor paving substituted for timber floors, and conventional shaped natural stone tiles in wet areas.
3. Hard path and steps removed from architectural scope. Soft landscaping solution by landscape

architect.

4. Driveway finish changed and widened in accordance with the authorisation for street levels issued by Northern Beaches Council (Ref: SL2020/0241).
5. Driveway levels modified to suit Council requirements in accordance with the authorisation for street levels issued by Northern Beaches Council (Ref: SL2020/0241). Car turntable added.
6. Garage level raised by 300mm to RL17.700 because of accommodating [5].
7. Garage roof and garden edge lifted 150mm to RL20.850 (from approved RL 20.700) as a result of accommodating [5] and [6].
8. Main roof ridge lowered by 290mm to RL22.750 as a courtesy to improve the view amenity of a neighbour to the west. Roof slope adjusted to 11.6 degrees (from 12.5 degrees as approved).
9. Bin store reshaped and curved wall deleted. Bin store lid level shown at RL20.150 (approved at RL 19.800). Refer to plans for dims where appropriate. Alteration in part because of compliance with prescribed conditions of consent (23) + (25) relating to tree protection and arborist's recommendations.
10. Minor alteration to configuration of glazing. Fixed glass to study. Glazed swing door out of laundry. Note net area and amount of glass remains unchanged.
11. Minor alteration to configuration of glazing. Refer to plan for relocation of walls. Note. net area and amount of glass remains unchanged. floor area slightly reduced.
12. Swimming pool infinity edges (and associated ballast tank) deleted and zone changed to accessible path and landscaped wall/planter.
13. Steps introduced to pool terrace to access service path. Refer to plans for dims where appropriate.
14. Extra solar panels added to increase energy efficiency of development.
15. Block wall moved down to align with pool equipment adjacent as shown. Note this change is underground and not visible to the public or neighbours.
16. Plant and equipment store area increased by moving western wall further west in order to accommodate the required equipment with ventilation and service space. Refer to plans for dims where appropriate.
17. Block wall to be changed to screening for ventilation and sound attenuation.
18. Seat added.
19. Landscape plan amended in accordance with prescribed conditions of consent (15) + (38).
20. Height of landscaped wall facing the street increased at its northern end to a maximum height of 1800mm above ground level for increased safety and privacy to adjacent sunken courtyard and to better reflect the sloping topography of the land

## **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 - Zone RE1 Public Recreation
- Pittwater Local Environmental Plan 2014 - 5.1 Relevant acquisition authority
- Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose
- Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
- Pittwater 21 Development Control Plan - B6.2 Internal Driveways
- Pittwater 21 Development Control Plan - C1.1 Landscaping
- Pittwater 21 Development Control Plan - C1.23 Eaves
- Pittwater 21 Development Control Plan - D12.5 Front building line
- Pittwater 21 Development Control Plan - D12.6 Side and rear building line
- Pittwater 21 Development Control Plan - D12.8 Building envelope
- Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
- Pittwater 21 Development Control Plan - D12.11 Fences - General

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 70 DP 11067 , 32 The Strand WHALE BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The site is irregular in shape, with a primary frontage of 19.13m to Whale Beach Road, a secondary frontage of 18.29m to The Strand and a depth of 63.385m. The site has a surveyed area of 1105m<sup>2</sup>. The site is subject to split zoning; with the western portion of the site zoned E4 Environmental Living and the eastern portion of the site zoned RE1 Public Recreation under the provisions of the PLEP 2014. A single storey dwelling house that once occupied the western portion of the site zoned E4 has since been demolished as part of the works associated with original application. Vehicular and pedestrian access for the yet to be constructed dwelling is proposed via the Whale Beach Road frontage. The site falls approximately 11.54m from the Whale Beach Road frontage to the Thre Strand frontage, with the majority of the fall occuring in the western portion of the site. The site is identified on the Geotechnical Hazard Map, Coastline Hazard Map, Flood Hazard Map, Foreshore Building Line Map and Biodiversity Map of the PLEP 2014. Adjoining and surrounding development is characterised by low-density residential dwellings of varied architectural styles.</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:

### 11 December 2019

Development Application No. DA2019/0913 was approved by Council.

### 28 July 2020

The subject modification was lodged with Council.

### 28 August 2020

A site inspection was undertaken by the assessing officer.

## 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 DA2019/0913, 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
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The modified proposal is scaled down when compared with the original application, and the changes to finishes, landscaping and glazing arrangements are considered to be not result in additional amenity impacts for neighbouring properties. The alterations to the driveway/vehicle access arrangement, front fencing are also considered to have a negligible impact on the streetscape or surrounding natural environment.</p>
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<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 DA2019/0913 for the following reasons:</p> <p>The modified proposal has sought to lower the main roof ridge by 290mm, such that the development is scaled down and provides for a greater level of view sharing for the properties along the western (upper side) of Whale Beach Road. The changes sought to the flooring finishes, window/door glazing arrangements, the provision of solar panels and driveway are not considered to result further amenity impacts. Whilst the marginal increase to the front fence height will be noticeable when viewed from Whale Beach Road, the slope from the public footpath is such that the development will not be a dominating structure. Further changes to the driveway levels, finishes and the provision for a vehicle turntable respond to conditional requirements of the original application while also providing safer and more convenient vehicle access onto Whale Beach Road. In summary, the changes are seen to reduce the scale of the original application and do not result in an increase to the floor area of the dwelling house.</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</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>



Section 4.55(1A) - Other Modifications	Comments
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	
(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 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;A Regulation 2000 requires the</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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&amp;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&amp;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&amp;A Regulation 2000 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 98</u> of the EP&amp;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/This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>

Section 4.15 'Matters for Consideration'	Comments
with the EPA Act or EPA Regs	
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 not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/08/2020 to 20/08/2020 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
Landscape Officer	<p>No objections are raised to the proposed modification in general terms, however it is noted the Landscape Plan has been updated in accordance with existing conditions 15 and 38.</p> <p>Review of the plans indicates that the required amendments outlined in Condition 15 have been provided (see below). The plan provided appears to be the same as that submitted with the application and requires the plan to be implemented and certified and is still relevant.</p> <p>Consequently, the proposal can be supported providing that both conditions be retained in the landscape plan submitted with the s455 modification not form part of the approved drawings.</p>



Internal Referral Body	Comments
	<p>15. <b>Amendment of Landscape Plans</b> The submitted Landscape Plan is to be amended in accordance with the following:</p> <ul style="list-style-type: none"> <li>i) Deletion of exotic and environmental weed species.</li> <li>ii) Replacement with a planting schedule comprising a minimum of 80% locally native species as a proportion of the total number of plants. Locally native species with the relevant section of the Native Gardening Booklet available on Council's website. The planting schedule is to specify details including stratum, species/common names, sizes and staking details.</li> <li>iii) Provision of a minimum of 5 canopy tree replacement plantings. Species minimum mature height of 6m and be consistent with Council's Native Gardening Booklet.</li> <li>iv) Provision of locally native shrub species within the setback to southern boundary of swimming pool (between the pool terrace and southern side boundary) to be screen plantings that attain a minimum mature height of 3m and planted at a minimum pot size, and planted no more than 1 metre apart.</li> </ul> <p>The amended Landscape Plan is to be certified by a qualified landscape architect of the Construction Certificate.</p> <p>Reason: To ensure landscaping is consistent with relevant Natural Environment Act controls.</p>
NECC (Bushland and Biodiversity)	No objections are raised to the proposed modification in general terms, however it is noted that the Landscape Plan has been updated in accordance with existing conditions 15 and 38. in relation to this matter by Council's Landscape Officer, which are supported
NECC (Coast and Catchments)	<p>The modification application has been assessed in consideration of the <i>Coastal Management Environmental Planning Policy (Coastal Management) 2018</i> and has also been assessed in relation to the <i>Pittwater LEP 2014</i> and <i>Pittwater 21 DCP</i>.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p> <p>The proposed modifications are in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> As the subject site has been identified as being within the coastal zone and therefore SEPP 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Use Area' map but not been included on the Coastal Use Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (SEPP 2018) and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p>

Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated 29 June 2020, the DA satisfies requirements under clauses 14.1.1 and 14.1.2 of the Pittwater Local Environmental Plan 2014.</p> <p>As such, it is considered that the modification application does comply with the requirements of the Pittwater Planning Policy (Coastal Management) 2018.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>The property is located within a “Wave inundation” hazard area designated on the Coastal Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 Development Control Plan (DCP)). The subject property is also mapped under Coastline Beach Hazard Area on the Pittwater 21 Development Control Plan (DCP). Coastal Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 Development Control Plan (DCP)) will apply to new development of the site.</p> <p><b>Coastline (Beach) Hazard Management</b></p> <p>The submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners has made reference to the Coastline Risk Management Report by Horton Coastal Engineers 2019, submitted with the DA 2019/0913 application.</p> <p>The report assessed that a Coastline Planning Level of 8.5m AHD can thus be adopted, which is above the habitable floor level in the dwelling. Therefore, the risk of inundation impacting habitable floors (the Lower Ground Floor) will be acceptably low. This assessment is also supported by the proposed Lower Ground Floor materials that can tolerate inundation, such as concrete or natural stone. Any electrical equipment, wiring, and any other connections in the dwelling should be placed above 8.5m AHD, or waterproofed if below 8.5m AHD. Modifications do not involve any significant changes to the floor levels of the approved development footprint.</p> <p>The proposed development does comply with the requirements of Clause 7.5 of Pittwater LEP 2014, Section B3.3 of the Pittwater 21 DCP and the Coastline Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 Development Control Plan (DCP)) for the matters considered herein.</p> <p><b>Development on Foreshore Area</b></p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.5 of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>No development is nominated by the proposed modification within the foreshore area. The proposed development and proposed modifications are significantly setback from the designated foreshore building line.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated 29 June 2020, the DA satisfies requirements under clauses 14.1.1 and 14.1.2 of the Pittwater Local Environmental Plan 2014.</p>

Internal Referral Body	Comments	
	by BBF Town Planners dated 29 June 2020, the Modification DA satisfies the objectives Clause 7.8 of the Pittwater LEP 2014	
NECC (Development Engineering)	The proposed modifications do not alter the original assessment and approval by Develo No objection to approval with no additional or modified conditions of consent recommend	
NECC (Riparian Lands and Creeks)	The proposed modifications do not make any significant changes to the building footprint objections based on water quality or riparian grounds.	
NECC (Stormwater and Floodplain Engineering – Flood risk)	All proposed modifications are outside of the Medium Flood Risk Precinct. There are no applicable flood related development controls.	
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>	
	Discussion of reason for referral	
	The proposal has been referred to Heritage as the subject property is within proximity to item	
	<b>Norfolk Island Pines (Araucaria heterophylla) - eastern side of The Strand</b>	
	Details of heritage items affected	
	Details of the item as contained within the Pittwater heritage inventory is as follows:	
	<u>Statement of significance:</u>	
	The Norfolk Island Pines are a defining landscape element for Whale Beach, but also for ocean beaches in Pittwater and along the coast of NSW and southern QLD. These pine are significant for their historic association with early settlement and as local cultural plantings instances dating from the 1930s. The Norfolk Island Pine plantings also have a high level environmental and aesthetic value.	
<u>Physical description:</u>		
There are approximately 33 Norfolk Island Pines located along the eastern and to a lesser western edges of the beach car park. The trees have a mix of sizes and age and many have achieved dramatic proportions and scale. The Pines are a visible feature of the Beach view approaching from the north via Whale Beach Road.		
Other relevant heritage listings		
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Australia (NSW)	No	

Internal Referral Body	Comments		
	Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks modifications to an approved dwelling. The heritage item is located the subject site, across The Strand. There is adequate separation between the heritage dwelling by way of the road reserve and the yard of the subject property.		
	Therefore Heritage raises no objections and requires no conditions		
	Consider against the provisions of CL5.10 of PLEP.		
	Is a Conservation Management Plan (CMP) Required? No		
	Has a CMP been provided? No		
	Is a Heritage Impact Statement required? No		
Has a Heritage Impact Statement been provided? No			
Further Comments			
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 4 August 2020			

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition 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 55 - Remediation of Land**

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

## **SEPP (Building Sustainability Index: BASIX) 2004**

The application details that the net area of glazing remains unchanged with the modified proposal. It has therefore been considered that a revised BASIX Certificate would not be necessary for this particular application. The commitments of the approved BASIX Certificate, Ref. 1020266S are to be adhered to.

## **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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

## **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:

### **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:

The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and managed to avoid an adverse impact on the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings.

**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:

It is considered that the proposed development is not likely to cause increased risk of coastal hazards on the subject site or other land.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Zone RE1: Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone RE1: Yes Zone E4 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies

Height of Buildings:	8.5m	9.85m (RL 19.415)	Unchanged - 9.85m (RL 19.415)	-	Yes
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### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

### Detailed Assessment

#### **Zone RE1 Public Recreation**

No works are proposed within the area zoned "RE1 Public Recreation".

#### **5.1 Relevant acquisition authority**

In accordance with Clause 5.1, the consent authority has identified that the relevant authority of the State to acquire land identified as Zone RE1 Public Recreation and marked "Regional open space" on the Land Reservation Acquisition Map as 'The corporation constituted under section 8 of the Act', being the *Land Acquisition (Just Terms Compensation) Act 1991*.

#### **5.1A Development on land intended to be acquired for public purpose**

In accordance with Clause 5.1A, the land identified as Zone RE1 Public Recreation and marked "Regional open space" is to be maintained as a recreation area.

As discussed previously within this report, no building works are proposed within the RE1 Public Recreation zone, and as such, the consent authority can be satisfied in this regard.

#### **Pittwater 21 Development Control Plan**

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building	6.5m	0m (gate house)	Unaltered	No, but as

line		1.5m (outdoor courtyard - excavated 5.1m (garage)	(provision for vehicle turntable on internal driveway)	approved.
Rear building line	6.5m	Works outside FBL	Unaltered	Yes
Side building line	2.5m (south)	0-6m	Unaltered (plant and equipment store area to the southern boundary increased in size)	No, but as approved.
	1m (north)	0m-2.7m	Unaltered	No, but as approved.
Building envelope	3.5m @ 45 degrees (south)	Within envelope	Unaltered	Yes
	3.5m @ 45 degrees (north)	Outside envelope by 1.1m	Unaltered	No, but as approved.
Landscaped area	Based on 60% of 881.6m <sup>2</sup> (528.96m <sup>2</sup> )	51.2% (451.8m <sup>2</sup> )	50.8% (447.8m <sup>2</sup> )	No.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	No	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	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

### Detailed Assessment

#### **A4.12 Palm Beach Locality**

The proposed dwelling house approved under development consent DA2019/0913 is a three storey development which is supported on merit, despite exceeding the desire for dwelling houses to be no more than a maximum of two storeys in any one place. The modifications as part of this application do however seek to reduce the main roof ridge by 290mm (to RL 22.750) in order to improve views for an adjacent property to the west along Whale Beach Road. As such, consideration has been given that the resultant development will achieve greater consistency with the requirements of this clause. Based on the above, it is considered that the proposal is acceptable within the Palm Beach\* Locality.

**\*Note:** The suburb of Whale Beach forms part of the Palm Beach Locality Map.

## **B6.2 Internal Driveways**

The provision of a vehicle turntable located on the internal driveway is seen to provide the occupants with an ability to enter/exit the site in a forward direction onto Whale Beach Road. Such an arrangement is considered to achieve the relevant outcomes of this clause such as to provide safe and convenient access, as well as pedestrian safety. The modifications as they relate the driveway arrangement are considered acceptable and are supported.

## **C1.1 Landscaping**

Council's Landscape Officer has reviewed the Landscape Plan submitted as part of this application and has provided response detailing that the required amendments outlined under Condition 15 of development consent DA2019/0913 has not been addressed. Further, the Landscape Officer indicated that the plan provided appeared the same as that submitted with the original application. Condition 38 requires the Landscape Plan to be implemented and certified prior to an Occupation Certificate being issued and therefore is still of relevance. As such, Council's Landscape Officer has detailed that the proposal generally can be supported, provided that both conditions be retained in the consent and the Landscape Plan submitted with the s4.55 modification not form part of the approved drawing for the modification.

Based on the above, the recommendation made from Council's Landscape Officer is concurred with and therefore the the consent requirements under DA2019/0913 as they relate to landscaping are to remain unchanged.

## **C1.23 Eaves**

The proposed modifications to the roof do not provide for eaves along the the eastern, southern or the western elevations of the dwelling. In this regard, the arrangement remains unchanged to that approved under the original application. As discussed within the Assessment Report for DA2019/0913, Council was satisfied that the development was of contemporary character, consistent with other developments in the locality. The submitted BASIX information submitted at the time also indicated that appropriate levels of solar access and shading would be achieved.

Based on the above, the proposed modification are considered to continue satisfying the outcomes of this clause and the non-compliance is supported on merit.

## **D12.5 Front building line**

### **Requirement:**

6.5m front building line setback to Whale Beach Road.

### **Proposed:**

0m setback to gate house/entry;  
1.5m setback to the outdoor courtyard; and  
5.1m setback to the garage.

The application proposes a number of modifications within the 6.5m minimum front building setback prescribed in relation to Whale Beach Road. These changes include raising the Garage level by 300mm, lifting the Garage roof and garden edge by 150mm and reconfiguring the bin store area



(including the deletion of the curved wall near the southern boundary. As discussed earlier in this report, a vehicle turntable has also been indicated forward of the garage and within the front setback area. The provision for a turntable is seen to comply with an outcome of this clause which requires developments to facilitate vehicle manoeuvring in a forward direction. Variations to the control for the purposes of facilitating car parking within the front setback was considered acceptable in the original application (in part) due to the steeply sloping topography of the site.

It should be noted that with the exception of the garage, the second floor, being the only level of the dwelling visible from Whale Beach Road, is compliant with the front setback control and is to have the main roof ridge seen from Whale Beach Road lowered by 290mm (RL 22.750). The development being predominantly below the road level reduces the overall dominance, built form and visual streetscape impacts. As discussed earlier in this report, Council's Landscape Officer has detailed that whilst the proposal generally can be supported, that the relevant landscaping conditions enforced under DA2019/0913 are to remain unchanged.

Based on the above, the proposed modification within the front setback are supported on its merits and considered to satisfy the outcomes of this clause.

#### **D12.6 Side and rear building line**

##### **Requirement:**

2.5m (South) side building line  
1m (North) side building line

##### **Proposal:**

0m-6m (South)  
0m-2.7m (North)

The modifications include an encroachment within the southern side building line setback in order to facilitate the increased size required for the plant and equipment store. It should be noted that the approved plant and equipment store also had a nil setback, and that the changes as part of this application are to accommodate required equipment with ventilation and service space.

Despite the non-compliance, the proposal is considered to maintain sufficient privacy and amenity between the occupants of the subject site and those of adjoining properties. Furthermore, the proposal has adequately demonstrated that an acceptable level of solar access will continue to be maintained with the development also achieving view sharing. The resultant landscaping arrangement and external colours and finishes to the dwelling will further assist to visually reduce the bulk and scale of the development.

Based on the above, the proposed modification are considered to continue satisfying the outcomes of this clause and the non-compliance is supported on merit.

#### **D12.8 Building envelope**

The modification application does not seek a further encroachment to the building envelope than that approved under the original application. It is therefore considered that the proposal is acceptable.

#### **D12.10 Landscaped Area - Environmentally Sensitive Land**

##### **Requirement:**

60% of site area

**Approved:**

51.2% (451.8m<sup>2</sup>)

**Proposed:**

50.8% (447.8m<sup>2</sup>)

As the site is subject to a split zoning, the part of the lot zoned RE1 Public Recreation has not be included within the calculation for total landscaped area. The area of the lot zoned E4 Environmental Living has been measured at 881.6m<sup>2</sup>. Therefore, 60% of the land zoned E4 Environmental Living is 528.96m<sup>2</sup>.

The proposed modification application is technically non-compliant with the control that requires 60% of the site to be landscaped. The proposal seeks to reduce the approved landscaped area on site by approximately 4m<sup>2</sup> from 51.2% (451.8m<sup>2</sup>) to 50.8% (447.8m<sup>2</sup>). The reduction in landscaped area is due to the increased size required for the plant and equipment store. Consideration has been given that despite this further non-compliance, that the resultant landscaping and stormwater arrangement will remain acceptable. Further, the proposed changes will not result in an unreasonable impact on the amenity and solar access provided for neighbouring properties.

Based on the above, the proposed modification are considered to continue satisfying the outcomes of this clause and the non-compliance is supported on merit.

#### **D12.11 Fences - General**

The modification application seeks to increase the maximum height of the front boundary wall facing Whale Beach Road to 1.8m above existing ground level. The proposed arrangement remains technically non-compliant with the control to not exceed a maximum height of 1m above existing ground level. It should be noted that the assessment report for the original application considered a variation to this control requirement on account of the sloping topography of the site and that the boundary wall (1.1m-1.8m) would be predominately below the road level of Whale Beach Road. The front boundary wall also acts as a landscape planter that is expected to compliment the visual character as viewed from Whale Beach Road.

Based on the above, and noting existing conditions concerning the render finish of this boundary wall, the proposed modification are considered to continue satisfying the outcomes of this clause and the non-compliance is 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. Mod2020/0334 for Modification of Development Consent DA2019/0913 granted for demolition works and construction of a dwelling house including a swimming pool on land at Lot 70 DP 11067,32 The Strand, WHALE 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**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
100.01, Rev C (Site & Locality Plans)	26.06.19	Shaun Lockyer Architects Pty Ltd
200.01, Rev B (Second Floor)	18.04.19	Shaun Lockyer Architects Pty Ltd
200.02, Rev B (First Floor)	18.04.19	Shaun Lockyer Architects Pty Ltd
200.03, Rev B (Ground Floor)	18.04.19	Shaun Lockyer Architects Pty Ltd
210.01, Rev C (Roof Plan)	26.06.19	Shaun Lockyer Architects Pty Ltd
300.01, Rev D (North & East Elevations)	04.09.19	Shaun Lockyer Architects Pty Ltd
300.02, Rev D (South & West Elevations)	04.09.19	Shaun Lockyer Architects Pty Ltd
400.01, Rev C (Sections - Sheet 1)	04.09.19	Shaun Lockyer Architects Pty Ltd
400.02, Rev C (Sections - Sheet 2)	04.09.19	Shaun Lockyer Architects Pty Ltd
400.03, Rev C (Sections - Sheet 3)	04.09.19	Shaun Lockyer Architects Pty Ltd
400.04, Rev B (Sections - Sheet 4)	04.09.19	Shaun Lockyer Architects Pty Ltd

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Addendum Letter Ref. J2226B	10.07.2020	White Geotechnical Group Pty Ltd

d) 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. Add Condition under heading "DEVELOPMENT CONSENT OPERATIONAL CONDITIONS" to read as follows:**

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


<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>
Ausgrid	Response Ausgrid Referral

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



**Kent Bull, Planner**

The application is determined on 08/09/2020, under the delegated authority of:



**Tony Collier, Acting Development Assessment Manager**