

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0522
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 9 DP 15762, 11 Bruce Street MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2020/1289 for demolition works and construction of a dwelling including 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:	Barry Norman Edward Hastie Cynthia Marion Handley
Applicant:	James de Soyres & Associates Pty Ltd
Application Lodged:	23/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/08/2021 to 18/08/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(1A) Modification Application seeks to amend the approved development application DA2020/1289 in the following ways, as described in the Statement of Modification:

Basement Internal Layout

Basement level reconfigured within the same footprint to add Ensuite 1 and WIR 1 and relocate the Bath to next to a smaller Laundry. Minor modifications to internal wall layouts.

Ground Floor Internal Layout

Internal layout modifications to Study, Bed 3, Ensuite 2, WIR 2, Powder and Pantry. Pantry window alcove deleted otherwise the footprint remains unchanged.

Exterior doors, windows and skylights

Changes to doors, windows and skylights as shown on the modification application drawings. Additional of external privacy blind.

Roof

Pantry window alcove roof deleted.

Planter

Front fence and planter modified to suit Australia Post letter delivery requirements and to accommodate an electrical meter box.

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 - C1.5 Visual Privacy

SITE DESCRIPTION

Property Description:	Lot 9 DP 15762 , 11 Bruce Street MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Bruce Street.</p> <p>The site is regular in shape with a frontage of 17m along Bruce Street and a depth of between 33.6m and 43.3m. The site has a surveyed area of 588m².</p> <p>The site is located within the E4 Environmental Living zone from the Pittwater LEP and accommodates a part one part two storey brick and tiled hipped roof dwelling which faces toward Warriewood Beach to the east.</p> <p>The site slopes approximately 3m from west to east. There</p>

are three (3) trees on the site, a Norfolk Pine tree is located to the south-east of the site within the reserve.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one, two and three storey dwellings. The dwellings on the eastern side of Bruce Street face the ocean to the east and sit at a lower level than the dwellings on the western side. The dwellings to the west side of Bruce Street and along Narrabeen Parade sit at a elevated level and primarily comprises large detached three storey properties.

To the immediate east of the site is an area of vegetated reserve beyond this are beach dunes and Warriewood Beach.

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 no. 2020/1289** for demolition works and the construction of a dwelling house and swimming pool, approved 09 February 2021

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 DA2020/1289, 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> <ul style="list-style-type: none"> • the modifications do not result in any excavation above and beyond the approved development; • the modifications do not result in any vegetation removal above and beyond the approved development; • the building envelope is not subject to change; and • the modifications do not give rise to any amenity impacts to neighbouring occupiers that would be considered unreasonable.
(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>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 DA2020/1289 for the following reasons:</p> <ul style="list-style-type: none"> • the modifications do not compromise the policy compliance of the scheme; • the modifications do not change the height of footprint of the building; • the modifications to not change the approved planting or materials schedule; and • the modifications, when viewed from the public or private domain, are largely non-

Section 4.55(1A) - Other Modifications	Comments
	discernible commensurate to that of the approved development.
(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, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control 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 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	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development

Section 4.15 'Matters for Consideration'	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. 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 matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/08/2021 to 18/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1119269S_02 dated 19 July 2021).

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

Commitment	Required Target	Proposed
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Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	93

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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:

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:

The proposed works will not remove native vegetation or wildlife habitat and are therefore considered to comply with clause 11 of the SEPP.

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:

The proposal will not impact on the coastal environment, water quality or native vegetation. The site is

positioned to the west of the Warriewood Beach Reserve no native vegetation will be removed and existing public open space and safe access to the foreshore will not be impacted by the development.

- (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:

Given the position of the site the proposal will not impact on the coastal environment and Council's Coast and Catchment team raised no objections to the parent development application.

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:

As discussed above, the proposal will not impact on access to the foreshore. It will not result in overshadowing or loss of views to the foreshore from a public place. The proposal will not impact on the visual and scenic quality of the coast or cultural heritage.

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

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:

Given the set back of the development from the coastal zone the proposal is unlikely to increase the risk of coastal hazard.

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?	
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	8.5m	no change	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	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	<p>Basement level - 6.1m -8.2m (slight breach to one corner for a length of 2m which is located below ground level)</p> <p>Ground Floor - 6.2m - 6.9m to wall of dwelling (slight breach for a length of approx 2m) *ancillary structures - retaining walls to courtyard 4.3m</p> <p>*retaining walls are permitted within the</p>	No change	No (as approved)

		front setback.		
Rear building line	6.5m	4m to pool 13.7m to wall of dwelling	No change	No (as approved)
Side building line	2.5m	North - 2.7m to the wall of the dwelling Ancillary structures: wall to WC 1.6m wall to drying area 0.4m to 0m	No change	No (as approved)
	1m	South - 1m	No change	Yes
Building envelope	3.5m	Southern elevation Outside envelope in two areas: Area 1 - 0 - 1.3m in height for a length of 2.6m above the ground floor kitchen and Area 2 - 0 - 1.1m in height for a length of 4.6m above the first floor garage	No change	No (as approved)
	3.5m	Northern elevation Within envelope	No change	Yes
Landscaped area	60%	42.65% (250.8sqm)	No change	No (as approved)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.9 Mona Vale Locality	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	Yes	Yes
D9.10 Landscaped Area - General	Yes	Yes
D9.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D9.12 Fences - General	Yes	Yes
D9.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D9.16 Character of the Public Domain - Mona Vale Commercial Centre	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

The modifications sought to window and door arrangements are not considered to result in any unreasonable loss of privacy to occupiers or neighbours, and it is found that an acceptable provision of privacy is afforded by the development.

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. Mod2021/0522 for Modification of Development Consent DA2020/1289 for demolition works and construction of a dwelling including swimming pool on land at Lot 9 DP 15762,11 Bruce Street, MONA VALE, 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
DA-01 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-10 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-11 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-12 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-13 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-20 Rev. B	02 June 2021	James de Soyres + Associates

		Architects
DA-21 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-22 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-30 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-31 Rev. B	02 June 2021	James de Soyres + Associates Architects
DA-32 Rev. B	02 June 2021	James de Soyres + Associates Architects

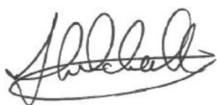
Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate no. 1119269S_02	19 July 2021	James de Soyres + Associates Architects
NatHERS Certificate no. 0005177449-04	12 July 2021	Efficient Living

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.

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

Signed



Adam Mitchell, Principal Planner

The application is determined on 23/08/2021, under the delegated authority of:



Lashta Haidari, Manager Development Assessments