



statement of modification



MODIFICATIONS TO DA2020/0096

26 RALSTON ROAD
PALM BEACH NSW 2108

Novemembr 2023

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introduction

This statement of modification has been prepared by Northern Beaches Planning on behalf of Mr and Mrs Nassif to accompany the lodgement of an application to modify Development Consent DA2022/0033 which approved the demolition of a dwelling house and the construction of two new dwelling houses at 26 Ralston Road, Palm Beach.

This statement is informed and accompanied by the following documentation:

- Architectural Plans by Crawford Architects
- Arboricultural Impact Statement by Red Gum Horticultural

site details

The site comprises two separate allotments, Lot 4 and Lot 5 in Section 10 of DP 14048.

Lot 4, the western lot, is slightly irregular in shape, with a 18.29m wide frontage to the southern side of Ralston Road, a maximum depth of 46.055m and a total area of 766.3m². Lot 5, the eastern lot, is also slightly irregular in shape, with a 16.765m wide frontage to the southern side of Ralston Road, a maximum depth of 45.79m and a total area of 731.6m².

The site slopes from the higher south-eastern rear corner of Lot 5 down towards the lower north-western front corner of Lot 4, with a fall of approximately 5m. An existing dwelling house is located towards the rear of the site across both lots. Vehicular and pedestrian access is gained via an existing access driveway to Ralston Road. A number of significant canopy trees are located on the site.

An aerial view of the site is provided in Figure 1, with images of the site in Figure 2 and 3.

The site is zoned C4 Environmental Living under the provisions of Pittwater Local Environmental Plan 2014 (**PLEP 2014**), as shown in Figure 4. The site is identified as being prone to bushfire.

The site is surrounded by dwelling houses of varied age, scale and architectural style, in a landscaped setting. The site is located within close proximity of McKay Reserve (to the west).

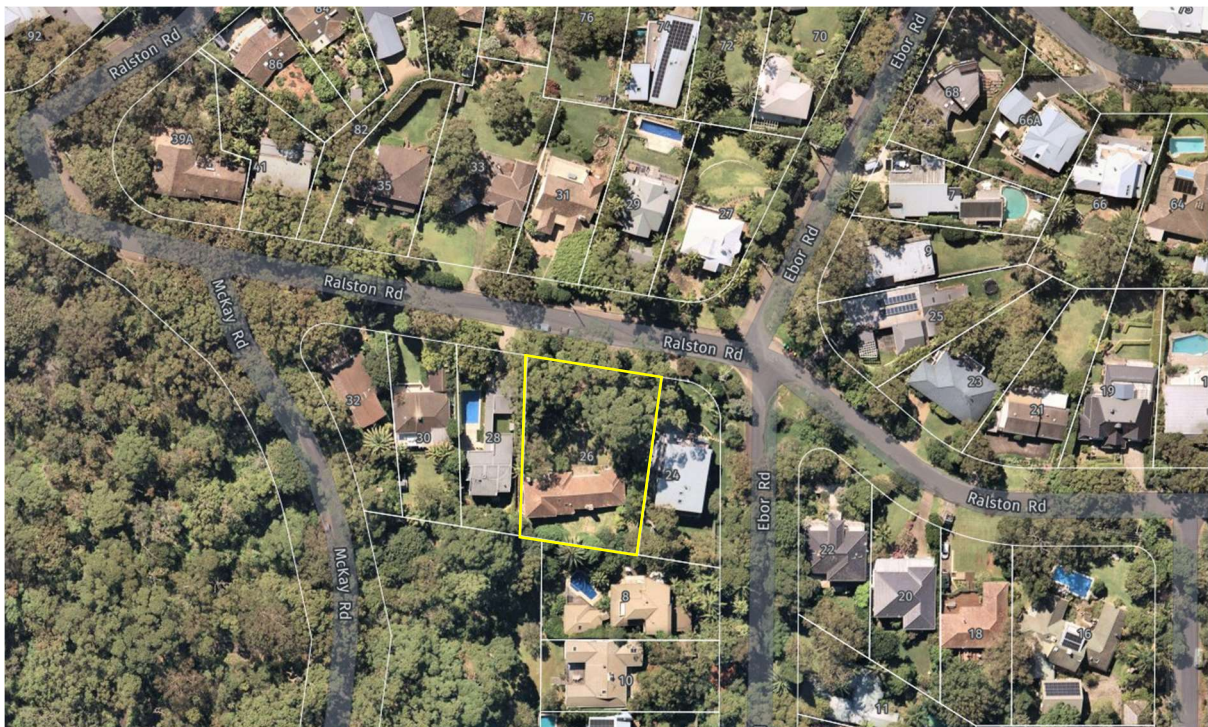


Figure 1 – Aerial image, with site highlighted in yellow
Source: Nearmap



Figure 2 – The site as seen from Ralston Road
Source: NBP



Figure 3 –The existing dwelling
Source: NBP

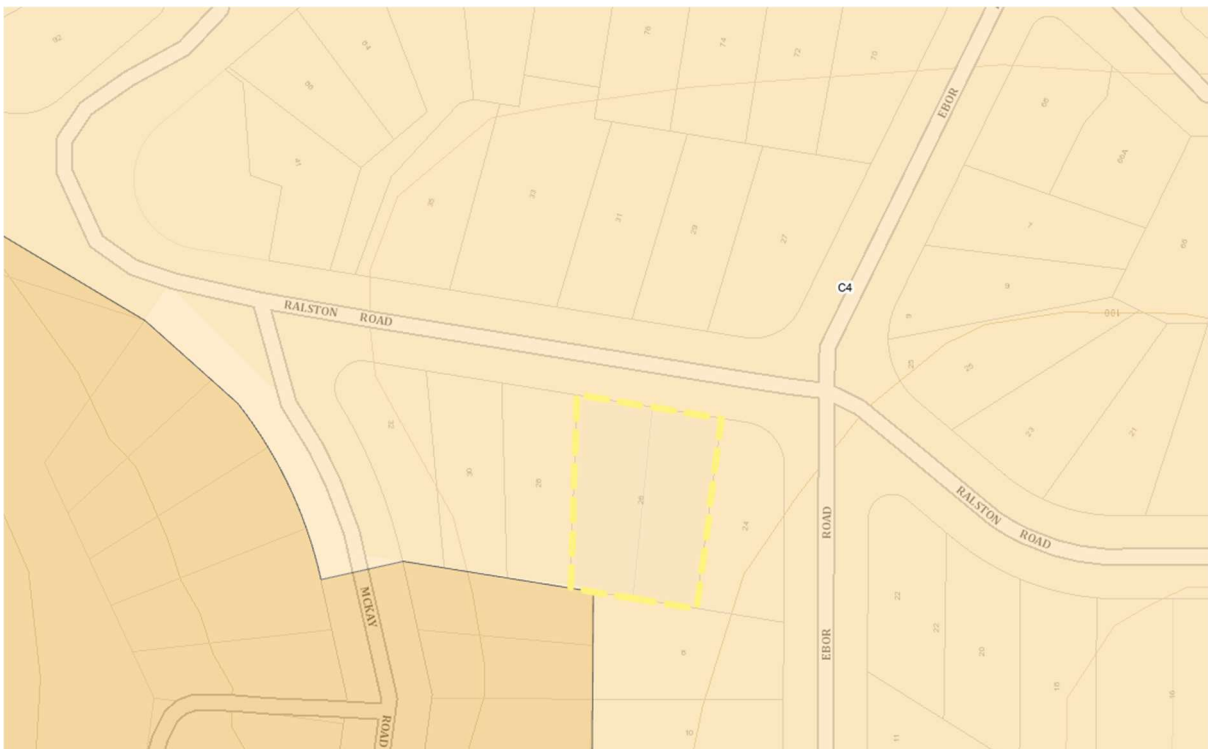


Figure 4 – Zoning Map of PLEP 2014, with site highlighted in yellow
Source: ePlanning Spatial Viewer

background

On 6 February 2020, Development Application DA2020/0096 was lodged with Council, seeking consent for the demolition of the existing dwelling sited across both lots and the construction of two new dwelling houses, one of each of the lots.

On 9 September 2020, DA2020/0096 was approved under the delegation of the Development Determination Panel of Northern Beaches Council. An indication of the siting of the approved dwellings and the approved access arrangement is shown in Figure 5, below.

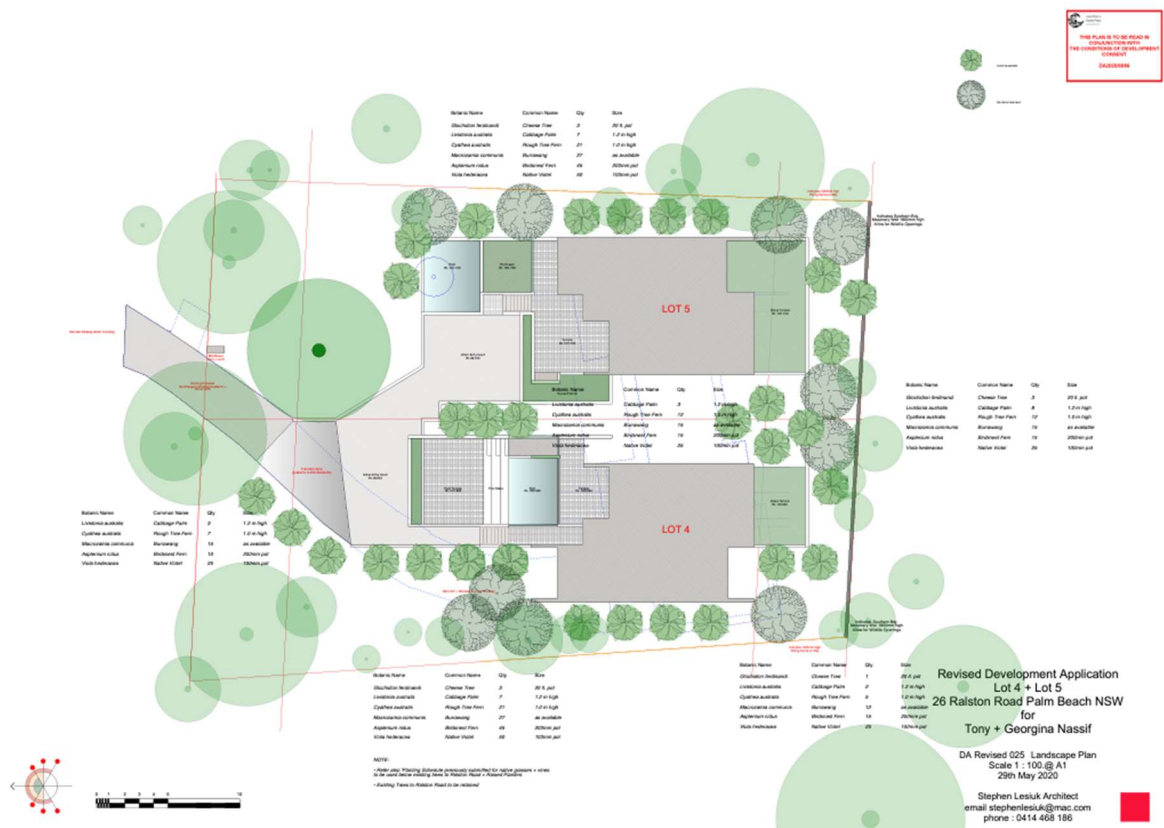


Figure 5 – Approved Landscape Plan by Stephen Lesiuk Architect
Source: Northern Beaches Council

Of relevance to this application, Condition 18 of DA2020/0096 required the following amendments to the Approved Plans:

The proposed roof at the western elevation of Lot 4 is to be deleted. The maximum height of the western wall/elevation is to be RL106.25.

The proposed roof parapet to the east of the roof terrace of Lot 5 is to be reduced in height by 450mm.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To reduce the bulk and visual impact of the dwelling at the western elevation.

On 4 October 2022, Modification Application Mod2022/0518 was lodged with Northern Beaches Council, seeking an increase to the height of both dwellings and the deletion of Condition 18.

On 28 June 2023, the Development Determination Panel refused Mod2022.0518 for the following reasons:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Part C1.3 of the Pittwater 21 DCP in that:
 - The proposed increase height will adversely affect the sharing of views with 8 Ebor Road, Palm Beach.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Part D12.8 of the Pittwater 21 DCP in that:
 - The proposed increase in building height will result in excessive built form that is unable to be satisfactorily screened and softened.

The meeting minutes from the DDP meeting stated:

The Panel viewed the site and the surrounds.

The Panel was addressed by representatives of the applicant.

The Panel agreed that the proposed modifications would result in additional view impacts, particularly if the vegetation on the eastern side of lot 5 were to be removed.

The Panel also notes the low floor to ceiling heights in the current approval and the desire to increase them. However, the Panel is of the view that there is a better way to do this without needing to increase the maximum approved RLs. The Panel is of the view that this needs to be explored in more detail but in a future application.

The Panel, while supporting the recommendation for refusal, does not support the reasons for refusal as drafted in the assessment report. In particular, the Panel does not agree that the documentation submitted with the application was inadequate and therefore cannot support that as a reason for refusal.

proposed development

The application seeks consent for the following modifications to the dwelling houses approved pursuant to DA2020/0096:

- Alteration to floor levels of the dwelling on Lot 4:

	Approved (RL)	Proposed (RL)	+/-
Garage	99.00	98.50	-0.50m
Ground	100.70	100.20	-0.50m
First	103.40	103.10	-0.30m
Roof	106.25	106.10	-0.15m
Parapet	106.25* - 106.70	106.25	-0.45m - Nil

*Condition 18 was imposed to require removal of the parapet along the western side of Dwelling 4, such that the western wall higher is no higher than RL 106.25 (level with the roof).

- Reduction to floor levels of the dwelling on Lot 5:

	Approved (RL)	Proposed (RL)	+/-
Garage	99.00	98.50	-0.50m
Ground	101.85	101.35	-0.50m
First	104.55	104.25	-0.30m
Roof	107.40	107.25	-0.15m
Parapet	107.40 - 107.85*	107.40	-0.45m - Nil

*Condition 18 was imposed to require a reduction to the level of part of the roof parapet of the Dwelling on Lot 5, which would result in an RL of 107.40 (level with the roof).

- Deletion of Condition 18.

The primary reason for the proposed modifications is to facilitate compliant ceiling heights. The Approved Plans demonstrate a floor-to-floor height of 2.7m, with ceiling heights of approximately 2.0m, well short of the 2.4m minimum ceiling height prescribed by the BCA and the 2.7m industry standard for habitable rooms. The modified plans provide 2.9m - 3.0m floor-to-floor heights, with a reduced floor void to facilitate 2.4m - 2.75m ceiling heights.

Noting that Condition 2 of the development consent requires compliance with the provisions of the BCA, the proposed modifications also seek to correct this inconsistency.

The application also seeks to delete Condition 18 which required reductions to the height of certain parts of each dwelling. The condition is now redundant by virtue of the proposed modifications, which achieve the same outcome, albeit with an alternate design outcome.

Aside from reference to the modified plans and Arboricultural Impact Assessment Report provided and the deletion of Condition 18, no further changes to the conditions of consent are proposed or required.

legislation, plans and policies

The following relevant state and local policies are applicable to the proposed development:

- Environmental Planning and Assessment Act (**EP&A Act**)
- Environmental Planning and Assessment Regulation 2021 (**EP&A Regulation**)
- State Environmental Planning Policy (Sustainable Buildings) 2022
- State Environmental Planning Policy (Resilience and Hazards) 2021
- Pittwater Local Environmental Plan 2014 (**PLEP 2014**):
 - Acid Sulfate Soils Map: Class 5
 - Land Zoning Map: C4 Environmental Living
 - Height of Buildings Map: 8.5m
 - Biodiversity Map
- Pittwater 21 Development Control Plan (**P21 DCP**)
 - Palm Beach Locality
 - Landscaped Area 1
 - Bushfire Map: Vegetation Buffer

local environmental plan

The site is identified on the Land Application Map of PLEP 2014 and the provisions of this policy are applicable in relation to the site and the proposed development.

The relevant provisions of PLEP 2014 are considered, as follows:

Clause	Standard	Approved	Proposed	Compliance
Zone C4 Environmental Living				Yes
4.3 Height of buildings	8.5m	Lot 4: 7.7m Lot 5: 6.6m	Lot 4: 7.6m Lot 5: 6.5m	Yes
7.1 Acid sulfate soils	Class 5			Yes
7.2 Earthworks				Yes
7.6 Biodiversity				Yes
7.10 Essential services				Yes

development control plan

P21 DCP is applicable to the site and the proposed development. The site is identified within the Palm Beach Locality. The relevant provisions of P21 DCP are considered, as follows:

Clause	Control	Approved	Proposal	Compliance
A1.7 Considerations before consent is granted	Have regard for the matters for consideration under section 4.15 of the EP&A Act.		The matters for consideration prescribed by section 4.15 of the EP&A Act have been considered.	Yes
A4.12 Palm Beach Locality				Yes
B1.4 Aboriginal Heritage				Yes
B3.2 Bushfire Hazard	All development is to be designed and constructed so as to manage risk due to the effects of bushfire throughout the life of the development.		The proposed modifications do not alter the setbacks of the development or any aspect of the dwellings that would impact upon the conditions imposed by the NSW RFS.	Yes
B3.6 Contaminated Land and Potentially Contaminated Land				Yes
B4.6 Wildlife Corridors	Development shall not result in a significant loss of canopy cover or a net loss in native canopy trees.		The application is supported by an Arboricultural Impact Assessment Report by Red Gum Horticultural, which confirms that the proposed modifications will not result in any additional impacts	Yes

Clause	Control	Approved	Proposal	Compliance
			upon existing canopy trees. No additional tree removal is proposed.	
B5.15 Stormwater				Yes
B6.2 Internal driveways	Internal Driveways are to be designed and constructed to provide safe access and shall have a maximum gradient of 1:5 (V:H). Recommended maximum gradient of an Internal Driveway for a distance of 2m on the approach to a garage, parking area or carport is 1:20 (V:H).		Minor alterations are proposed to the levels of the driveway in response to the reduced level of the garage. The gradient remains compliant with AS2890.1	Yes
B6.3 Off-Street Vehicle Parking Requirements	2 spaces for each dwelling, compliant with AS2890.1	2 spaces for each dwelling, compliant with AS2890.1	2 spaces for each dwelling, compliant with AS2890.1	Yes
B8.1 Construction and Demolition – Excavation and Fill			Additional excavation is proposed to achieve compliant floor to ceiling heights, whilst maintaining consistency with the maximum RLs imposed by Council in Condition 18.	Yes See discussion
B8.3 Construction and Demolition – Waste Minimisation				Yes

Clause	Control	Approved	Proposal	Compliance
B8.4 Construction and Demolition – Site Fencing and Security				Yes
C1.1 Landscaping				Yes
C1.2 Safety and Security				Yes
C1.3 View Sharing	All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.		<p>The proposed development results in a reduction to the levels of the building, with no change to the setbacks or siting of the dwellings.</p> <p>There will be no additional impacts to views, with a minor enhancement to potential views arising from the proposed modifications.</p>	Yes
C1.4 Solar Access	The main private open space of each dwelling and windows to principal living areas are to receive 3 hours of direct sunlight between 9am and 3pm in midwinter.		The proposed modification will not result in any additional overshadowing, with a minor reduction to overshadowing compared to that originally approved.	Yes
C1.5 Visual Privacy	Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from		The proposed changes to floor levels result in changes to the heights/levels of approved windows and balconies. The modified	Yes

Clause	Control	Approved	Proposal	Compliance
	direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation.		development maintains appropriate privacy for adjoining properties, with no additional or adverse impacts associated with the modifications proposed.	
C1.6 Acoustic Privacy			No change.	Yes
C1.7 Private Open Space			No change.	Yes
C1.12 Waste and Recycling Facilities	All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan		The Approved Waste Management Plan remains relevant to the modified proposal.	Yes
C1.13 Pollution Control			No change.	Yes
C1.17 Swimming Pool Safety			No change.	Yes
C1.23 Eaves			No change.	Yes
D12.1 Character as Viewed from a Public Place	Built form is to be secondary to landscaping.		The visual impact of the modified development will remain largely the same as that originally approved, as seen from Ralston Road.	Yes

Clause	Control	Approved	Proposal	Compliance
D12.3 Building Colours and Materials			No change.	Yes
D12.5 Front Building Line	6.5m (minimum)	Lot 4: 14.3m Lot 5: 14.5m	No change.	Yes
D12.6 Side and Rear Building Line	1m to one side, 2.5m to the other. 6.5m to rear.	Lot 4: 1.1m to one side, 2.9m to the other and 6.7m to rear. Lot 5: 1.1m to one side, 2.8m to the other and 6.7m to rear.	No change.	Yes
D12.8 Building Envelope	A 45 degree plane projected from a point 3.5m above the side boundary.	Minor protrusion on western elevation of both dwellings.	The proposed development results in a reduction to the levels of the building and in turn, a reduction to the extent of the protrusion originally approved.	Yes
D12.10 Landscaped Area – Environmentally Sensitive Land	60% minimum	Lot 4: 61.1% Lot 5: 64.6%	No change.	Yes
D12.11 Fences - General			No change.	Yes
D12.13 Construction, Retaining Walls, Terracing and Undercroft Areas				Yes
D12.14 Scenic Protection Category One Areas			No change.	Yes

Clauses B8.1 Construction and Demolition – Excavation and Fill and D12.13 Construction, Retaining Walls, Terracing and Undercroft Areas

The Approved Plans demonstrate a floor-to-floor height of 2.7m, with ceiling heights of approximately 2.0m, well short of the 2.4m minimum ceiling height prescribed by the BCA and the 2.7m industry standard for habitable rooms. The previous modification application, Mod2022/0518, sought to address this issue by increasing the floor level of Level One and the roof/parapet levels, with no additional excavation proposed. However, this was not supported by Council due to the resultant increase to the height of the dwellings and potential impacts upon the amenity of adjoining properties.

Rather, Council suggested that the issue would be more appropriately resolved by:

- lowering the floor levels of the lower levels (additional excavation), and
- reducing the height of the parapets.

As such, this modification application proposes to lower the floor levels of the Basement and Ground Floor, with a reduction to the height of the parapets of both dwellings, to achieve compliant ceiling heights whilst respecting the maximum RLs stipulated in the original consent.

The proposed development will result in additional excavation below the footprint of the dwellings and the driveway. However, the additional excavation is considered to be reasonable in circumstances where:

- the additional excavation will not result in any adverse impacts to existing trees, as confirmed in the accompanying Arboricultural Impact Assessment by Red Gum Horticulture,
- the proposed ceiling heights are not excessive, and
- the additional excavation will not be perceived from the public domain, with no visible retaining walls presenting to the street.

state environmental planning policy (resilience and hazards)

Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land. The provisions of Chapter 4 replace those of State Environmental Planning Policy No. 55 – Remediation of Land, that was in force at the time the original consent was granted, but which has subsequently been revoked.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The subject site has been used for residential purposes for an extended period of time, with no prior known land uses, and Council can be reasonably satisfied that there is no contamination risk.

Overall, the proposed development is consistent with the relevant provisions of SEPP (Resilience and Hazards).

environmental planning and assessment act

The application is made pursuant to s4.55(1A) of the EP&A Act, which provides:

Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, 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.*

Minimal environmental impact

The proposed modifications have been designed to facilitate compliant ceiling heights, with no increase to the height of the development and no additional impacts upon existing canopy trees.

The footprint of the development remains unchanged, with no new or additional impacts upon the amenity of adjoining properties with regards to visual impact, overshadowing, visual privacy or views.

As such, Council can be satisfied that the proposed modifications are of minimal environmental impact.

Substantially the same

In *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 (and then endorsed in *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWLR 468 and *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1992] NSWLEC 280 (**Moto Projects**)), the term “substantially” was said to mean “essentially or materially having the same essence”. Further, in *Sydney City Council v Ilenace Pty Ltd* [1984] 3 NSWLR 414, the term “modify” was said to mean “to alter without radical transformation”.

In *Moto Projects*, it was said that the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified, but rather that the comparison should involve a qualitative and quantitative appreciation of the development in their proper contexts, including the circumstances in which the development consent was granted.

Council can be satisfied that the proposed development will not result in a radical transformation of the development as approved and that the proposed modifications will result in a development that is essentially and materially the same as that which was originally approved, as follows:

- The description of the development remains unchanged.
- The layout, form and setbacks of the two dwelling houses remain unchanged.
- The height of the dwellings is marginally reduced.
- The location and use of individual rooms remain unchanged.
- The driveway location remains unchanged.
- The impacts associated with the approved development with respect to solar access, views and privacy remain unchanged.
- The landscaped treatment of the site remains unchanged.
- The impact upon surrounding trees and vegetation remains unchanged.
- There are no new/additional retaining structures, with only a minor increase to the height of existing retaining structures.

As such, Council can be satisfied that the proposed development is substantially the same as that originally approved.

Section 4.15 of the EP&A Act

In accordance with section 4.55(3) of the EP&A Act, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

In this instance, the application was determined by the Development Determination Panel who provided the following reasons for supporting the recommendation of approval:

The proposal generally satisfies the relevant strategy, objectives and provisions of Pittwater LEP 2014 and the Pittwater 21 DCP subject to conditions.

The modified proposal does not detract from the nominated reason for approval, as the modified development remains consistent with the original approval with respect to compliance with the objectives and provisions of PLEP 2014 and P21 DCP.

The matters prescribed by section 4.15(1) of the EP&A Act are considered, as follows:

Clause	Provision	Comment
(a)	<p><i>the provisions of—</i></p> <ul style="list-style-type: none"> <i>i. any environmental planning instrument, and</i> <i>ii. any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the</i> 	<p>The relevant provisions of PLEP 2014, all relevant SEPPs, and P21 DCP have been considered and addressed in this statement.</p>

Clause	Provision	Comment
	<p><i>proposed instrument has been deferred indefinitely or has not been approved), and</i></p> <p><i>iii. any development control plan, and</i></p> <p><i>iv. any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i></p> <p><i>v. the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i></p> <p><i>that apply to the land to which the development application relates,</i></p>	
(b)	<i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i>	The likely impacts of the proposed development have been addressed with respect to relevant plans and policies in this statement. The proposed development will not result in any unacceptable impacts upon the natural or built environment, or any social or economic impacts in the locality.
(c)	<i>the suitability of the site for the development,</i>	The subject site remains suitable for the proposed development.
(d)	<i>any submissions made in accordance with this Act or the regulations,</i>	The application will be notified to all neighbouring properties, with any submissions received to be considered by Council.
(e)	<i>the public interest.</i>	The proposed development is in the public interest, in so far as it is consistent with the objectives and outcomes of PLEP 2014 and P21 DCP.

Overall, Council can be satisfied that the proposed modifications are consistent with the provisions of s4.55 of the EP&A Act, and that the consent can be modified in the manner proposed.

conclusion

The proposed modifications are beneficial and facilitative, providing compliant ceiling heights without compromising the amenity of adjoining properties. The modified proposal does not result in any new areas of non-compliance, is of minimal environmental impact and remains substantially the same as that which was originally approved. As such, Council can be satisfied that the application can be appropriately addressed under the provisions of s4.55(1A) of the EP&A Act.

The modified development remains consistent with the desired future character of the Palm Beach Locality and the application warrants Council's support in this regard.



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