

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0512
----------------------------	--------------

Responsible Officer:	Michael French
Land to be developed (Address):	Lot 2 DP 221631, 78 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Modification of Development Consent DA2019/0152 granted for Demolition Works and construction of a dwelling house including swimming pool and refurbishment of existing boatshed
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Pamela Sarah Nemeny Samantha Kate Nemeny
Applicant:	Ben Nemeny

Application Lodged:	30/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	11/10/2022 to 25/10/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This Modification Application seeks to amend DA2019/0152 in the following ways:

- Addition of a deck to the rear of the boat shed.
- Addition of a deck to the north of the boat shed.
- Reconfiguration of the waterway access stairs.
- Extension of the pool deck.
- Addition to the storage area in the carport.

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 - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 2 DP 221631 , 78 Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Hudson Parade.</p> <p>The site is irregular in shape with a frontage of 29.8m along Hudson Parade and a depth of 104.5m. The site has a surveyed area of 1366m².</p> <p>The site is located within the C4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan 2014 and accommodates a one and two-storey dwelling house.</p> <p>The site slopes downward towards the western rear of the property.</p> <p>The site has a mix of vegetation in the front and rear yards. There are no details of any threatened species within the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

similar developments within a C4 Environmental Living zone.

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:

MOD2022/0180 dated 24 June 2022. Alterations and Additions.

MOD2021/0421 dated 23 August 2021. Alterations and Additions.

MOD2020/0343 dated 16 September 2020. Alterations and Additions.

MOD2020/0337 dated 21 August 2020- Modification of approved Conditions of Consent.

DA2019/0152 dated 23 August 2019- Demolition Works and construction of a dwelling house including swimming pool and refurbishment of existing boatshed.

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 DA2019/0152, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposed modifications are minor and do not propose significant changes from DA2019/0152 and its successive modifications.</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>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/0152 for the following reasons:</p> <p>The modifications do not propose the addition of any major built form. All proposals/modifications are low lying and are considered to have a minimal environmental impact.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	<p>No submissions were received in relation to this application.</p>

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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an Arborist Report.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 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>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/10/2022 to 25/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Biodiversity Referral (28 November 2022) These updated referral comments are based on submitted arboricultural advice (Standfast Tree Services, 22 November 2022). The arboricultural assessment indicates that additional tree protection measures are now required in order to retain the trees, as required under previous consents. Support for the proposed modification is therefore subject to implementation of the arborist's recommendations.
	Biodiversity Referral (16 November 2022) Additional information is required in order to complete the biodiversity referral. The proposed works are within close proximity to Trees 34 and 29, which are required under the existing consents to be retained and protected. A statement or report by a minimum AQF Level 5 arborist must be submitted, which demonstrates whether/how all prescribed trees on the site and adjoining sites will be safely retained.

Internal Referral Body	Comments
	<p>Assessment of the modification against applicable biodiversity controls will recommence upon receipt of this information.</p> <p>In addition, the applicant should note that portions of the property have been added to the NSW Government's Biodiversity Values Map (BV Map) since the original development consent. Under the NSW Biodiversity Conservation Act 2016, any proposal to impact native (to NSW) vegetation within the BV Map area will trigger entry into the Biodiversity Offsets Scheme (BOS), the requirement for a Biodiversity Development Assessment Report (BDAR) and potentially a biodiversity offset credit obligation. If the proposed modification will result in impacts to native vegetation on the BV Map, entry into the BOS will be triggered and a BDAR will also be required.</p>
NECC (Coast and Catchments)	<p>SUPPORTED WITH CONDITIONS</p> <p>The modification application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed modification is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Modification - Statement of Environmental Effects (SEE) report prepared by Boston Bligh Fleming Pty. Ltd. dated 29 August 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the modification application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p>

Internal Referral Body	Comments
	<p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>On internal assessment the decking adjacent to the boatshed is located below the derived EPL for the site. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The modification DA proposes water access stairs, decking related to outdoor recreation associated with the boatshed. All these proposed works are consistent with Clause 7.8(2)(b).</p> <p>On internal assessment and as assessed in the submitted Statement of Modification - Statement of Environmental Effects (SEE) report prepared by Boston Bligh Fleming Pty. Ltd. dated 29 August 2022, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Development Engineering)	No objections to approval and no additional conditions.
NECC (Riparian Lands and Creeks)	<p>Supported.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy <p>The site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives.</p> <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.</p>

External Referral Body	Comments
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 970616S_05 dated 21 September 2022).

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes

zone objectives of the LEP?	Yes
-----------------------------	-----

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.85m (Dwelling) 7.9m (Flue)	unchanged (dwelling) unchanged (dwelling) 5.2m (carport)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
3.1 Exempt development	Yes
3.3 Environmentally sensitive areas excluded	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	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	4m-15.1m (carport)	17.2m (carport)	Yes
Rear building line	Foreshore Building Line applies	N/A	N/A	N/A
Side building line	2.5m (north)	2.5m (Dwelling) 2.5m (Carport)	2.5m (Dwelling) 2.5m (Carport) 0.9m (Decking stairs)	Yes Yes No
	1m (south)	1.0m (Dwelling) 1.2m (Swimming Pool) 0.7m (Existing boat shed)	1.0m (Dwelling) 1.2m (Swimming pool) 0.7m (Existing boat shed)	Yes Yes No

		0.9m (Carport)	1m (Carport) 0.9m (Rear Deck) nil (Stairs adjoining rear deck)	Yes No No
Building envelope	3.5m (north)	Encroachment of between nil and 2.4m over a length of 11.2m	Unaltered (all proposed new works are within envelope)	Yes
	3.5m (south)	Encroachment of between nil and 2.5m for a length of 10.8m	Unaltered (all proposed new works are within envelope)	Yes
Landscaped area	60% (819.6m ²)	54.6% (745.7m ²)	54.1%(739m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	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
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.2 Safety and Security	Yes	Yes
C5.4 View Sharing	Yes	Yes
C5.5 Accessibility	Yes	Yes
C5.7 Energy and Water Conservation	Yes	Yes
C5.8 Waste and Recycling Facilities	Yes	Yes
C5.10 Protection of Residential Amenity	Yes	Yes
C5.14 Car/Vehicle/Boat Wash Bays	Yes	Yes
C5.15 Undergrounding of Utility Services	Yes	Yes
C5.16 Building Facades	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.18 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C5.19 Food Premises Design Standards	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes

Detailed Assessment

D1.9 Side and rear building line

Description of non-compliance

Clause D1.9 Side and Rear Building Line (Pittwater 21 Development Control Plan) requires that built structures are setback a minimum 6.5m from the rear boundary, 2.5m from one side boundary and 1m from the other side boundary.

The proposal details a 2.5m setback to the northern side boundary with a non compliance formed by the stairs adjoining the rear decking.

The proposal presents a 0.9 setback, causing a 64% variation.

The proposal also details a 1m setback to the southern side boundary with a non compliance formed by the rear deck and the stairs adjoining the rear deck.

The proposal presents a 0.9m setback of the rear deck and a nil setback of the stairs adjoining the rear deck, causing a 100% variation

Merit Consideration

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

- *To achieve the desired future character of the Locality.*

Comment

The proposal aligns with the desired future character statement of the Avalon Beach Locality.

- *The bulk and scale of the built form is minimised.*

Comment

The siting of the proposed works provides sufficient space/screening to and from surrounding and adjacent properties. The new works are low-lying, minor and will not unreasonably increase the bulk and scale of the dwelling. The proposed bulk and scale of the dwelling aligns with surrounding dwellings. The impact of the proposed development on the streetscape is considered adequate.

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

Comment

The majority of proposed works are low-lying and not considered to impact view sharing, not interrupting any significant view corridors.

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

Comment

It is considered that there is sufficient levels of view sharing.

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

Comment

The proposed developments do not introduce excessive opportunity for overlooking, with the bulk and height of the development considered reasonable.

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

Comment

All mature canopy trees and vegetation are to proposed to remain on site.

- *Flexibility in the siting of buildings and access.*

Comment

All proposed works forming non-compliances are low-lying and are not expected to adversely impact adjacent and surrounding dwellings.

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

Comment

All mature vegetation is proposed to remain on site.

- *A landscaped buffer between commercial and residential zones is achieved.*

Comment

The development does not adjoin a commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

Clause D1.14 Landscaped Area- Environmentally Sensitive Land (Pittwater 21 Development Control Plan) requires that the total soft landscaped area shall total 60% of the site area. Whereby the use of porous materials and finishes is encouraged where appropriate.

The proposal presents a 54.1% (739m²) total open landscaped area, causing a 45.9% variation. This is a decrease on the approved 54.6% (745.7m²).

Merit consideration

With regards to the consideration for a variation, the development is considered against the underlying outcomes of the control as follows:

- *To achieve the desired future character of the Locality.*

Comment:

The proposal is considered to align with the desired future character statement of the Avalon Beach locality.

- *To bulk and scale of the built form is minimised.*

Comment:

The proposed bulk and scale of the dwelling aligns with adjacent and surrounding dwellings.

- *A reasonable level of amenity and solar access is provided and maintained*

Comment:

The proposal is not considered to adversely impact the level of a amenity or solar access provided.

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

Comment:

All mature vegetation is proposed to be retained on site.

- *Conservation of natural vegetation and biodiversity.*

Comment:

The proposal is not expected to adversely impact natural vegetation and biodiversity. Councils Bushland and Biodiversity officer has supported the application subject to Conditions of Consent.

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

Comment:

The proposal is not considered to significantly adversely effect stormwater runoff and its consequent impacts.

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

Comment:

The proposal is not considered to adversely impact the rural and bushland character of the area.

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

Comment:

The site contains the necessary permeable surfaces to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. Although there is a decrease of Total Open Landscaped Area on site, the decrease is minimal and will not unreasonably adversely impact the total permeable surfaces on site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 2022

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0512 for Modification of Development Consent DA2019/0152 granted for Demolition Works and construction of a dwelling house including swimming pool and refurbishment of existing boatshed on land at Lot 2 DP 221631,78 Hudson Parade, CLAREVILLE, subject to the conditions printed below:

A. Add Condition No.1C - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S4.55 01	31 August 2022	Marker Architecture & Design
S4.55 02	31 August 2022	Marker Architecture & Design
S4.55 03	31 August 2022	Marker Architecture & Design
S4.55 04	31 August 2022	Marker Architecture & Design
S4.55 05	31 August 2022	Marker Architecture & Design
S4.55 06	31 August 2022	Marker Architecture & Design
S4.55 09	31 August 2022	Marker Architecture & Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report	22 November	Standfast Tree Services

	2022	
Geotechnical Assessment	31 August 2022	Crozier Geotechnical Consultants
BASIX Certificate 970616S_05	21 September 2022	Marker Architecture & Design

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

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

B. Add Condition 42C No Weeds Imported On To The Site to read as follows:

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

C. Add Condition 63 Wildlife Protection to read as follows:

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

D. Add Condition 64 Protection of Habitat Features to read as follows:

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

E. Add Condition 65 Tree and Vegetation Protection to read as follows:

a) Existing trees and vegetation shall be retained and protected including:

- i) all trees and vegetation within the site not approved for removal
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,

- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

F. Add Condition 66 Implementation of Tree Protection Measures to read as follows:

All measures listed under 'Conclusions/Recommendations' of the submitted arboricultural assessment (Standfast Tree Services, 22 November 2022) must be fully implemented during the construction phase. Compliance with this condition is to be certified by the Project Arborist and written evidence provided to the Principal Certifying Authority prior to the Occupation Certificate.

Reason: To retain prescribed native trees not approved for removal

G. Add Condition 67 Estuarine Hazard Design Requirements to read as follows:

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be

demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

H. Add Condition 68 Estuarine Planning Level Requirement to read as follows:

An Estuarine Planning Level (EPL) of 2.5m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

All decking associated with the boatshed shall be of flood compatible materials;

Reason: To ensure aspect of the development are built at the appropriate level

I. Add Condition 69 Installation and Maintenance of Sediment and Erosion Control to read as follows:

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

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

Signed



Michael French, Planner

The application is determined on 15/12/2022, under the delegated authority of:



Steven Findlay, Manager Development Assessments