

29 June 2020

The Chief Executive Officer
Northern Beaches Council

Dear Sir / Madam,

32 THE STRAND, WHALE BEACH
Request for modification under Section 4.55(1A) to Development Consent
DA2019/0913 to alter the approved development

1 Introduction

Development Application no. 2109/0913 approved demolition works and construction of a dwelling house, including a swimming pool, upon the subject site. It was approved by the Northern Beaches Council on 11 December 2019. Modification to the development consent is sought to make other modest changes to the approved development, as described herein. The modifications proposed are the result of further detailed design during the preparation of the construction certificate and consequential to the conditions of the development consent.

2 Proposed Modifications

The proposed modifications are depicted in the accompanying architectural plans by Shaun Lockyer Architects and listed in summary below. Each numbered item (1 to 19) corresponds with a number on the architectural plans, as follows:

1. Typical to all external areas: stone floor paving substituted for conventional shaped natural stone tile.
2. Typical to all internal areas: stone floor paving substituted for timber floors, and conventional shaped natural stone tiles in wet areas.
3. Hard path and steps removed from architectural scope. Soft landscaping solution by landscape architect.
4. Driveway finish changed and widened in accordance with the authorisation for street levels issued by Northern Beaches Council (Ref: SL2020/0241).
5. Driveway levels modified to suit Council requirements in accordance with the authorisation for street levels issued by Northern Beaches Council (Ref: SL2020/0241). Car turntable added.
6. Garage level raised by 300mm to RL17.700 because of accommodating [5].
7. Garage roof and garden edge lifted 150mm to RL20.850 (from approved RL 20.700) as a result of accommodating [5] and [6].

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

The proposed modifications will necessitate a modification to the consent, to reflect the architectural plans that accompany this application.

3 Statement of Environmental Effects

3.1 Section 4.55(1A) and environmental assessment considerations

The following is a Statement of Environmental Effects made under the provisions of Section 4.55(1A) being modifications involving substantially the same development. Having regard to Section 4.55(1A) a consent authority may, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)*

In this regard, it is noted that:

- The nature of the proposed modifications are minor and within the scope of Section 4.55 (1A) being modifications involving substantially the same development for which consent was originally approved on the land.
- The application has taken 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 following Statement of Environmental Effects considers the nature of the proposed modifications and the potential impact of the changes on environmental planning grounds.

4 Environmental Assessment

4.1 Site analysis

4.1.1 Details of the property and subject site

The site is located 32 The Strand, Whale Beach. It is legally described as Lot 70 in Deposited Plan 11067. The site has an area of approximately 1,105m². The site has frontages to both The Strand and Whale Beach Road. The site is irregularly shaped with dimensions as follows:

- Northern, side boundary of 63.385m
- Southern, side boundary of 57.53m
- Eastern, rear boundary of 18.29m (vehicle access to The Strand)
- Western, front boundary of 19.13m (vehicle access to Whale Beach Road)

Key features of the site and its development include:

- The site and the adjoining properties have a west to east orientation to The Strand, which also forms the car parking area to Whale Beach.
- The site gains vehicle access from Whale Beach Road.
- The property is set within a developed hillside location that enjoys eastly views over Whale Beach and the Pacific Ocean.
- The land is characterised by steeply sloping topography, most notably within the western portion of the site. The land slopes significantly from the Whale Beach Road frontage down to the east, with a level difference of approximately 14.13m between Whale Beach Road and the lowest level within the rear of the property (approximately RL20 to RL 5.87). The land also has a 'crossfall' sloping from its northern to its southern side, in some locations upto approx. 2 metres. The site has a slope that ranges from moderate at the eastern end to steep towards the west, displaying grades up to approximately 27 degrees, between 51% to 55%, to the rear of the existing dwelling and where the proposed dwelling is positioned.

4.2 Zoning and key environmental affectations

The property is affected by 2 zones under the Pittwater Local Environmental Plan 2014 (LEP). The majority (883m² western portion of the site) is zoned E4 Environmental Living; a smaller eastern portion (222m²) is zoned RE1 Public Recreation and is also affected by a Regional open space land reservation; see map excerpt below.

The site is not affected by key environmental considerations like, for example heritage, biodiversity, and bushfire risks. The site is affected by acid sulfate soils, flood, coastal / tidal

inundation and geotechnical issues. These matters are addressed within section 5 of this report.

Based on the site investigations that have been undertaken, there are no zoning or environmental characterises that present impediments to the improvements proposed to the land.



Figure 1 - zoning map excerpt from the Pittwater Local Environmental Plan 2014

5 Pittwater LEP

Planning considerations from the Pittwater LEP 2014 that are relevant to the proposed modifications are noted and addressed as follows.

5.1 Zone

The proposal constitutes modifications to the approved new dwelling on the portion of the property that is zoned E4 Environmental Living. No development is proposed by the application within the RE1 Public Recreation zone at the eastern end of the site. The proposal is permitted within this zone with Development Consent.

Clause 2.3(2) of the LEP requires the consent authority to 'have regard to the objectives for development in a zone'. The proposed modifications represent modest changes to the approved development and are therefore assessed as being consistent with the zone objectives.

5.2 LEP Clause 4.3 Height of buildings

Clause 4.3 of the LEP 'Height of buildings' is applicable to the assessment of the proposal. It establishes an 8.5m height limit applicable to the site. The proposed modifications generally maintain the height of the approved DA except for the height of the approved garage and a lowering of the main roof ridge. The garage roof is proposed to be raised 150mm (Mod item 7) to accommodate a 300mm rise in the garage floor level; this is needed to achieve safe and

compliant vehicle access gradients from Whale Beach Road. This change results in a building height of approx. 7.5m and maintains a maximum building height under 8.5m where the modification is proposed. As described within section 7.2 of this report below, the proposed garage roof change is more than offset by a lowering of the main roof ridge, which involves a larger expanse when viewed from the west, by 290mm to RL22.750. This is anticipated to improve views from properties to the west. The proposed modifications satisfy the 'Height of buildings' development standard within LEP clause 4.3.

5.3 LEP Clause 7.1 Acid sulfate soils

The land is within an area designated as being Class 5 on Council's Acid Sulfate Soils Map. The proposed modifications do not involve any increase in the depth of excavation of the site that has been approved by DA 2109/0913. There are no further matters for assessment relating to acid sulphate soil conditions triggered by the proposed modification.

5.4 LEP Clause 7.2 Earthworks

The siting and design of the proposed development has considered the matters within clause 7.2(3) of the LEP and results in appropriate outcomes against these criteria. Furthermore, the proposal is accompanied by a geotechnical assessment that concludes that the proposal is appropriate for the site. Based on the above, the proposed modification satisfies the coastal planning considerations within clause 7.2.

5.5 LEP Clause - 7.3 Flood planning

Pursuant to Clause 7.3 of the LEP, the site is identified as being affected by potential flooding. In response, the proposed development has been appropriately designed in response to flood planning considerations. Horton Coastal Engineering, in their Flood Risk Management Report dated August 2019. The following is noted from section 7 of their report:

'The seaward edge of the proposed development is in the Low Flood Risk Precinct. The proposed Ground Floor Level of 8.5m AHD is well above the Flood Planning Level of 7.1m AHD. The storage enclosure floor level of 6.6m AHD is equal to the 1% AEP flood level, and with implementation of the measures described in Section 5 is considered to be at an acceptably low risk of damage. The proposed development satisfies the requirements of Chapter B3.11 of the Pittwater 21 DCP and Clause 7.3 of Pittwater Local Environmental Plan 2014.'

The Engineers have certified that the subject site is appropriate for accommodating the proposed land use, built form, and extent of the approved development. The proposed modifications do not involve significant changes to the floor levels of the approved development, nor any significant increase in the development footprint that has been approved by DA 2109/0913. Based on the above, the proposed development satisfies the flood planning considerations within LEP clause 7.3.

5.6 LEP Clause 7.5 - Coastal Risk Planning

Pursuant to clause 7.5 of the LEP the site is identified as being potentially affected by coastal risks. In response, the proposed development has been appropriately designed in response to coastal planning considerations. Horton Coastal Engineering, in their report dated August 2019 have reviewed the site along with the nature and extent of the approved development. The following is noted from section 7 of their report:

Wave action would temporarily and periodically increase water levels above the still water level, but wave runup would not extend to the subject structure as it is over 70m inland. That stated, inundation to 1.92m AHD would submerge much of the land seaward of the subject structure and hence allow some inland propagation of wave action. On this basis, it is considered to be reasonable to add a 0.3m freeboard to define the Estuarine Planning Level (EPL). The EPL is thus 2.22m AHD, which is below the proposed ground floor level and workshop entry level of 2.3m AHD as required.

The Engineers have certified that the subject site is appropriate for accommodating the proposed land use, built form, and extent of the approved development. The proposed modifications do not involve any significant changes to the floor levels of the approved development, nor any significant increase in the approved development footprint. Therefore, there are no further matters for assessment relating to coastal risk planning triggered by the proposed modification and the proposal is assessed as satisfying considerations within LEP clause 7.5.

5.7 LEP Clause 7.6 – Biodiversity

Pursuant to Clause 7.6, the site is identified on the biodiversity map. The original DA was accompanied and supported by an arboricultural assessment report by Urban Forestry Australia. It identified that no species of assessed tree is subject to threatened conservation status under Australian and/or State Government legislation (i.e. NSW Biodiversity Conservation Act 2016, and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999). The proposed modifications do not involve any significant changes to the approved building envelope or footprint and therefore the provisions of this clause are satisfied by the proposed modifications.

5.8 LEP Clause 7.7 – Geotechnical hazards

Pursuant to Clause 7.7, the site is identified on the geotechnical hazards map. The original DA was accompanied and supported by a geotechnical assessment report by White Geotechnical Group which certified the capacity of the land to accommodate the approved development. The proposed modifications do not involve any significant changes to the approved building envelope or building footprint, and therefore, the provisions of this clause are satisfied by the proposed modifications.

5.9 LEP Clause 7.8 - Limited development on foreshore area

The site is dissected by the foreshore building line and is subject to the provisions of clause 7.8 of the LEP. No development is nominated by the proposed modification within the foreshore area. Furthermore, the approved development and proposed modifications are significantly setback from the designated foreshore area. The provisions of this clause are satisfied by the proposed modifications.

6 State Environmental Planning Policies

6.1 State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 is applicable to the land. The Act is supported by the State Environmental Planning Policy (Coastal Management) 2018 which came into effect on 3 April 2018. It is applicable because, as shown on the map below, the south western section (the majority) of the site is within the designated:

- coastal environment area (Clause 13)
- coastal use area (Clause 14)

The scope of the proposed modifications are modest and not impactful in relation to the various criteria under the Coastal SEPP. The proposed modifications do not involve any significant changes to the approved building envelope or footprint, and therefore the matters for consideration within clause 8 under the SEPP are satisfied by the proposed modifications.

6.2 State Environmental Planning Policy - BASIX

The accompanying architectural plans note that minor alterations to the configuration of glazing are proposed, and that the net area of glass remains unchanged. The BASIX assessor has advised that a revised BASIX report is not triggered by the proposed modifications and the approved BASIX certificate is appropriately relied upon in satisfying the SEPP in terms of the DA assessment. The accompanying architectural plans include an updated BASIX assessor stamp confirming the above.

7 Pittwater DCP

7.1 Palm Beach Locality

The subject site is within the Palm Beach Locality. The scope of the proposed modifications are modest and not impactful in relation to the proposal's compatibility with the desired future character of the Palm Beach Locality. The modifications maintain a compatible development within the local landscaped setting.

7.2 DCP Principal Built Form Controls

Principal built form controls from the Pittwater DCP relevant to the proposed modifications are noted and addressed as follows:

- Front building line – no significant changes proposed.
- Side setback - the building's approved building footprint will largely be maintained by the proposed modifications. The modest proposed extension the storeroom within first floor level (Mod item 16) is set within the topography and below existing ground level. There are no adverse privacy, shading, or view impacts arising from this proposed modification. The proposed change is assessed as minor and appropriate in satisfying the provisions of the control.
- Building envelope – the building's approved building envelope will largely be maintained by the proposed modifications. The proposed 150mm increase in the height of the approved garage roof is appropriately setback by 3.6m from the southern side boundary and is compliant with the building envelope control.
- Landscaped area – the approved Landscaped area will be maintained by the proposed modifications, satisfying the provisions of the control.
- Solar access – the building's approved building envelopes will largely be maintained by the proposed modifications. The proposed modifications are assessed as appropriate in satisfying the provisions of the control.
- Privacy - privacy has been considered in the proposed design and satisfies the DCP's objectives. There are no new window openings or significant changes to the location or configuration of the approved living areas within the approved development. The proposed modifications are assessed as appropriate in satisfying the provisions of the control.

- Views – the proposed modifications involve a 150mm increase in the height of the approved garage roof. This is effectively offset by a lowering of the main roof ridge by 290mm to RL22.750, which involves a larger expanse when viewed from the west. This change is anticipated to improve views from properties to the west. Given the lower level (RL 22.850) of the garage roof (relative to the main roof ridge) together with the 290mm lowering of the main roof ridge, overall, the proposed modifications are likely to result in an improved view sharing outcome, and are therefore assessed as appropriate in satisfying the provisions of the control.

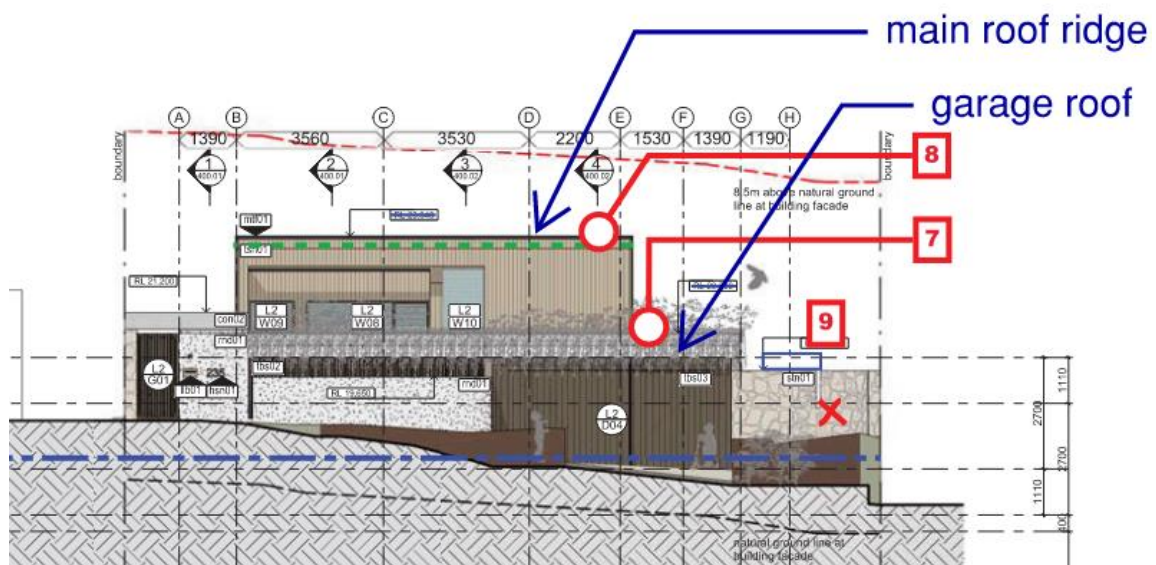


Figure 2 – the garage roof is significantly lower than the main roof ridge

- Character as viewed from a public place - the proposed modifications will present appropriately to the site's street frontages. The proposal will maintain appropriate material and colours, in keeping with the desired architectural characteristics and qualities of the locality.

In summary:

The proposed modifications provide for an appropriate architectural outcome for the property. The proposed built form outcome will be compatible with the established streetscape context and positively enhance the desired future character of this location. There will be no significant or unreasonable visual, privacy, shading or view loss impacts resulting from the proposed modifications and the provisions of the DCP controls are satisfied by the proposal. The proposed modifications are assessed as appropriate in satisfying the provisions of the DCP controls.

7.3 Section 4.15 Matters for Consideration and 4.55 (1A) Modifications

The proposal has been assessed having regard to the matters for consideration pursuant to Section 4.15(1) and 4.55(1A) of the Act, and to that extent, Council can be satisfied that:

- The site is suitable and capable of accommodating the proposed modifications based on its area, proportions, topography, and the environmental affectations which have been appropriately investigated and assessed.
- The proposal will not result in any significant unacceptable impacts that limit the use or enjoyment of nearby or adjoining land.
- The proposed modifications to Development Consent no.2109/0913 will provide an improved residential amenity without any unacceptable adverse impacts on the amenity of neighbouring properties of the approved housing development.
- The proposed modifications to Development Consent no.2109/0913 are appropriate changes to the development consent. The development as modified is substantially the same development for which consent was originally granted.
- The likely impacts of the proposed modification have been appropriately identified and considered.
- The public interest will be appropriately served by the approval of the proposed modification.

8 Conclusion

The proposed modification to Development Consent no. 2109/0913, at 32 The Strand, Whale Beach, for changes to the approved dwelling house, represent appropriate modifications.

The proposed development as modified is substantially the same development for which consent was originally granted. The proposed modification is appropriate when considering the relevant matters to the property and the proposal pursuant to Section 4.55(1A).

It is our considered opinion that the proposed development, as modified, is satisfactory and the modification may be approved by Council.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners