

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/1008
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 2 DP 1106194, 32 Grandview Parade MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2021/0372 granted for Demolition and construction of a new dwelling
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jason Malcolm Simpson Ruszczyk Katharine Rose Ruszczyk
Applicant:	Jason Malcolm Simpson Ruszczyk

Application Lodged:	12/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	25/01/2022 to 08/02/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to amend Development Consent No. DA2021/0372 relating to demolition works and construction of a new dwelling, which was approved by the Northern Beaches Local Planning Panel in June 2021.

The application is referred to the Panel as one of the property owners is an employee of Northern Beaches Council.

Part of the proposed modification seeks retrospective approval for the demolition of pre-existing lower ground and ground floor walls, retaining walls and swimming pool that were proposed to be retained within the original consent. The proposed modification also seeks retrospective approval for the new lower ground floor slab/foundation. The applicant has indicated that these works were required during the demolition process due to site contamination and in order to comply with relevant

Australian Standards and BCA requirements. Statements from the geotechnical and structural engineers have also been provided supporting the applicants position and specifying that blockwork retaining walls are required to be constructed as soon as practicable to stabilise the site and reduce the risk of erosion or collapse.

During the assessment, amended plans were received which made a minor reduction in the height of the dwelling to match the maximum height of the dwelling approved within the original consent (DA2021/0372) and amended the notation on the plans specifying that the existing pool was to be demolished (rather than retained) to fix discrepancies in the plans.

One (1) submission was received in response to neighbour notification. This submission raised concerns with unauthorised works, visual impact of the development, potential view loss, privacy, landscaping and amenity impacts associated with the approved solid fuel heater. These matters have been addressed within the report and are not considered to warrant refusal or further modification of this application.

The proposed modification will maintain the general form, envelope and height of the approved dwelling as approved under DA2021/0372. Overall, the proposed modification will result in a smaller habitable floor area, increase in landscaped area and the resultant development would retain the general form of the approved dwelling, garage and studio. The minor changes are not considered to result in unreasonable amenity impacts to adjoining neighbours or adverse impacts on the character of the approved development.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal represents a minor change to the built form of that approved under DA2021/0372 and the resultant development is suitable and appropriate for the subject site, for the reasons outlined in this report. Overall, it is considered the modification is reasonable and satisfactory on its merits.

Accordingly, it is recommended that the application be approved subject to modified conditions.

PROPOSED DEVELOPMENT IN DETAIL

The s4.55(1A) modification application seeks to modify Development Application No DA2021/0372 approved for demolition and construction of a new dwelling in the following way:

- Demolition of the entirety of existing dwelling and swimming pool. The approval under DA2021/0372 sought to retain portions of the dwelling and swimming pool (Note: these works have already been undertaken)
- New lower ground floor slab/foundation with a minor reduction in proposed floor level
- New stairs and path adjacent to garage
- Reconfiguration of lower ground floor including the addition of a bedroom
- New subfloor plant and storage rooms and watertank
- New window to lower ground floor and minor changes to existing window configuration
- New retaining wall to northern boundary
- Reconfiguration of ground floor including the slight reduction in floor level
- Changes to ground floor window configuration
- Minor reconfiguration of upper floor including the slight reduction in floor level
- Change in materials from rendered and painted brickwork to bagged and painted brickwork
- Change of roof form for the proposed covered walkway
- Minor increase in floor level of garage
- Minor increase in the ridge height of the studio

- Change in window configuration of garage and studio
- Repositioning of cabana

The submitted plans indicate a new pool and pavers within the rear garden. However, as specified on the plans, this new pool is not proposed as part of this modification application and will be applied for under a separate Complying Development Certificate. If approved, a condition is to be imposed on any consent specifying that no new pool is approved.

Overall, the proposed modification would result in a smaller habitable floor area, increase in landscaped area and the resultant development would retain the general form of the dwelling, garage and studio.

Part of the proposed modification seeks retrospective approval for the demolition of lower ground and ground floor walls, retaining walls and swimming pool that were proposed to be retained within the original consent. The proposed modification also seeks retrospective approval for the new lower ground floor slab/foundation. The applicant has specified within their Statement of Modification that:

"During demolition we encountered extreme site contamination, with buried fill of asbestos throughout. The existing building also encountered serious damp issues with the absence of under-slab membrane, absence of damp proof course, no waterproofing membrane or drainage behind retaining walls to habitable rooms, and no manageable termite treatment. In order to comply with the BCA and AS we had to address the latent conditions and existing non compliances. Emergency works were undertaken to remediate the site which involved demolition and removal of the structures that could not comply with the BCA and AS. This resulted in the removal of the few remaining walls that were intended to be kept. Emergency removal was required so that the following was possible.

- *structural certification,*
- *waterproofing certificates,*
- *termite certificates and*
- *design statements from the Builder and Architect that "all work is done to relevant BCA and AS."*

Statements from the geotechnical and structural engineers have been provided supporting this statement and specifying the requirement for blockwork retaining walls to be constructed as soon as practicable to stabilise the site and reduce the risk of erosion or collapse.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers,

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.17 Swimming Pool Safety
Pittwater 21 Development Control Plan - D9.7 Side and rear building line
Pittwater 21 Development Control Plan - D9.9 Building envelope
Pittwater 21 Development Control Plan - D9.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 2 DP 1106194, 32 Grandview Parade MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site consists of a single, regular shaped allotment located on the eastern side of Grandview Parade.</p> <p>The site has a frontage of 15.455m along Grandview Parade and a depth of 61.77m. The site has a surveyed area of 941.6m².</p> <p>The site is located within the R2 Low Density Residential zone. Development on the site includes a under construction three-storey detached dwelling house and detached garage and studio approved by Development Consent No. DA2021/0372. The site presently contains a foundation slab and excavation works. The pre-existing pool has also been demolished.</p> <p>The site falls from the rear boundary to the street frontage with a total fall of 9.55m and a slope of approximately 15.5%.</p> <p>The site contains an established, mature Norfolk Island Pine Tree located towards the front of the site and mediums sized trees and shrubs located in a garden bed along the rear boundary. There are no known threatened species of flora or fauna.</p> <p>Adjoining and surrounding development is characterised by low-density residential development within a landscaped setting.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **DA2021/0372** - Demolition and construction of a new dwelling - Approved by Northern Beaches Local Planning Panel - 02/06/2021 (subject of this modification application)

APPLICATION HISTORY

03/02/2022

Amended plans were received which amended the notation on the plans that the existing pool was to be demolished (rather than retained). It should be noted that the original plans submitted outlined the pool in dotted red outline to represent the demolition however, there was a discrepancy with the text.

11/02/2022

After concerns raised by Council, amended plans were received which reduced the height of the dwelling to match the maximum height of the dwelling approved within the original consent (DA2021/0372).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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 DA2021/0372 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 will not change the use of the site, • The modifications will not significantly alter the form of development that was originally approved, • The modifications will not result in increased adverse impacts on the natural environment nor the amenity of surrounding residential properties
(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 DA2021/0372 for the following reasons:</p> <ul style="list-style-type: none"> • The modifications will not change the use of the site, • The modifications will not significantly alter the form of development that was originally approved, • From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>

Section 4.55(1A) - Other Modifications	Comments
(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	
(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.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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 clause is not relevant to this application.</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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
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 25/01/2022 to 08/02/2022 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Nicholas Jonathan Senior Mrs Danielle Lisa Senior	25 Hillcrest Avenue MONA VALE NSW 2103

The following issues were raised in the submissions:

- Works have already been partially undertaken
- Visual impact
- Privacy
- Views
- No amended landscaping plan
- Impact of chimney flue and smoke from solid fuel heater

The matters raised within the submissions are addressed as follows:

- **Works have already been partially undertaken**

Comment:

Concern has been raised that unauthorised demolition works and the laying of the building slab subject of this modification have already been undertaken.

Part of the proposed modification seeks retrospective approval for the demolition of lower ground and ground floor walls, retaining walls and swimming pool that were to be retained under the original consent. The proposed modification also seeks retrospective approval for the new lower ground floor slab/foundation. The applicant has specified within their Statement of Modification that:

"During demolition we encountered extreme site contamination, with buried fill of asbestos throughout. The existing building also encountered serious damp issues with the absence of under-slab membrane, absence of damp proof course, no waterproofing membrane or drainage behind retaining walls to habitable rooms, and no manageable termite treatment. In order to comply with the BCA and AS we had to address the latent conditions and existing non compliances. Emergency works were undertaken to remediate the site which involved demolition and removal of the structures that could not comply with the BCA and AS. This resulted in the removal of the few remaining walls that were intended to be kept.

Emergency removal was required so that the following was possible.

- *structural certification,*

- *waterproofing certificates,*
- *termite certificates and*
- *design statements from the Builder and Architect that "all work is done to relevant BCA and AS."*

Modification Applications are able retrospectively approve changes to approved consents. The original Development Application had a description of works and was notified as "*Demolition and construction of a new dwelling*", and as such the works are consistent with this description of works. The proposed changes under this Modification Application would result in a lesser habitable floor area, increase in landscaped area and the resultant development would retain the general form of the approved dwelling, garage and studio (as approved under DA2021/0372). As such, the already carried out works and the proposed works are able to be approved under this modification application.

- **Visual impact**

Comment:

Concern was raised that the proposed modification would result in an increased visual impact when viewed from the neighbouring property to the east (No.25 Hillcrest Avenue). The proposed modification will retain the approved height and rear setback of the approved dwelling (as per DA2021/0372) and is not considered to result in unreasonable additional visual impacts to adjoining neighbours.

The submitted plans indicate a new pool and pavers within the rear garden. However, as specified on the plans, this new pool is part of this modification application and will be applied for under a separate Complying Development Certificate. If approved, a condition is to be imposed on any consent specifying that no new pool or associated pavers are approved.

- **Privacy**

Comment:

A submission has been received by the adjoining neighbour to the east (No.25 Hillcrest Avenue) in relation to privacy impacts. The submission raises concerns with the rear (east) facing windows of the proposed upper floor addition adjoining the ensuite and walk-in wardrobe. These windows were approved as part of DA2021/0372 and would be generally consistent with this approval. Additionally, these windows are proposed to be setback from the eastern (rear) boundary by an additional 1.0m from that approved under DA2021/0372, resulting in these windows being approximately 20.0m from the rear boundary. Given this spatial separation, these windows meet the requirements of this control which specifies that adjoining properties are to be protected from direct overlooking within 9.0m. In addition, these windows would serve an ensuite and walk-in robe, which are not considered high usage areas. As such, these windows are not considered to result in unreasonable privacy impacts to this neighbour.

- **Views**

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 View Sharing of the P21 DCP. In summary, the assessment of the original DA2021/0372 raised no concerns with regards to view loss. The proposed modification would keep the general form, envelope and height of the approved dwelling under DA2021/0372 and the proposed minor changes to the built form are not considered to result in unreasonable view loss to adjoining neighbours. District views over the proposed dwelling would be retained from the neighbour to the east.

- **No amended landscaping plan**

Comment:

Concern was raised that the modification application was not supported by an amended landscape plan. Specifically, concern was raised with regards to how new landscaping along the rear boundary would protect and/or impact privacy and views.

The proposed modification does not seek to alter the approved landscape plan, and the existing garden bed at the rear of the site is proposed to be retained. No new substantial trees are proposed as part of this application. The matter of privacy and views has been addressed within this report (see sections C1.3 and C1.5).

- **Impact of chimney flue and smoke from solid fuel heater**

Comment:

Concern was raised with regards to the proposed solid fuel heater and associated smoke impacts. This solid fuel heater was approved under the original consent and the current application does not seek amendments to this aspect of the proposed development. Conditions were imposed within the original consent by Council's Environmental Health Officer to ensure this heater is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements and that the ongoing use of this heater take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. If approved, these conditions will be retained within any consent.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	No objections to approval.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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.1180596S_02 dated 11/02/2022). The BASIX Certificate is supported by an NatHERS Certificate (see Certificate No.0005833074-01 dated 11/02/2022).

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections.

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
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Height of Buildings:	8.5m	8.5m	Unaltered	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The proposed works would not impact upon a heritage item, conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Garage: 7.6m	unaltered	Yes
Rear building line	6.5m	Cabana: 8.5m	Cabana: 9.6m (Note: New pool is not part of this mod application)	Yes
Side building line	2.5m (N)	North: 1.25m	Cabana: 1.3m Dwelling (unaltered)	No
	1.0m (S)	South: 1.0m	Terrace: 0.5m Dwelling (unaltered)	No
Building envelope	3.5m (N)	Outside envelope	Outside envelope *note: approved non-compliance reduced	No
	3.5m (S)	Outside envelope	Outside envelope *note: approved non-compliance reduced	No
Landscaped area	60% 564.9m ²	45.07%. 425.5m ²	51.3% 483.4m ²	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	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
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
B8.5 Construction and Demolition - Works in the Public Domain	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
C1.12 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
C1.23 Eaves	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
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	No	Yes
D9.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

The approved development includes three (3) storeys, where the locality calls for two (2) storey development. The proposed modifications do not alter the approved number of storeys, involve minimal environmental impact, are set below the general tree canopy height, and retain an appropriate balance between respecting the landform and encouraging development. Overall, the the proposed modification would result in a lesser habitable floor area, increase in landscaped area and the resultant development would retain the general form of the approved dwelling, garage and studio. As such, the proposed modifications achieve the intention of the desired character of the area and are acceptable in this regard.

B8.1 Construction and Demolition - Excavation and Landfill

The modification application seeks consent for the authorisation of existing excavation works which extend beyond the scope of the original approval. The application is supported by a geotechnical letter provided by Douglas Partners Pty Ltd which specifies that the works are acceptable from a geotechnical perspective and that the replacement retaining walls should be constructed as soon as possible to reduce the risk of localised instability along the eastern site boundary. The application has been reviewed by Development Engineer who has raised no objection to the proposed modification.

C1.3 View Sharing

In response to the notification of this application, one (1) submission was received from the adjoining neighbour to the east (No.25 Hillcrest Avenue) in relation to view loss. This submission raised concern regarding views to "*properties on Orana Road through to Barrenjoey Road and beyond into Mona Vale*" and "*district views*". The objector provided a photo of this view of concern as demonstrated in Photo 1 below:

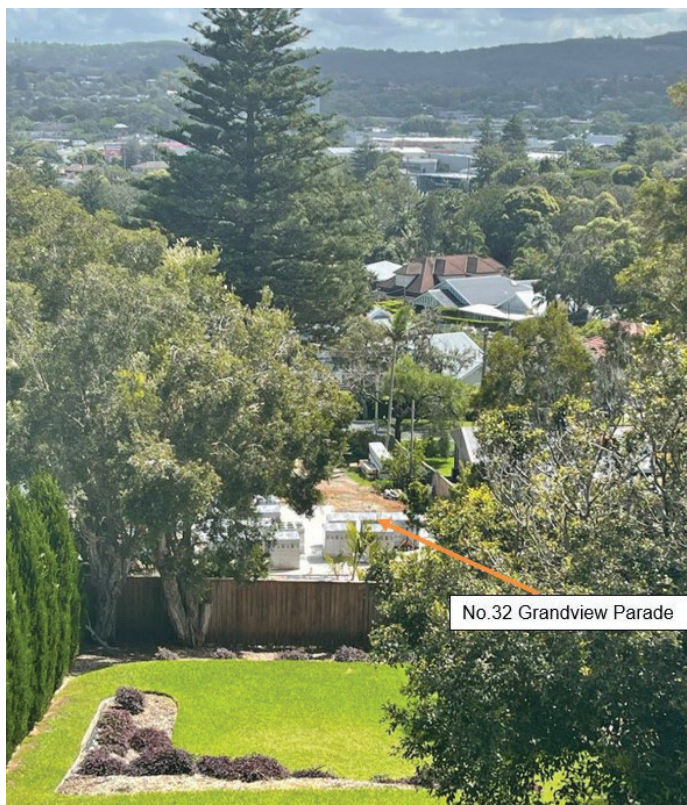


Photo 1 - View from No.25 Hillcrest Avenue over the subject site (photo provided by objector within

submission)

The assessment of the original DA2021/0372 raised no concerns with regards to view loss. The proposed modification will maintain the general form, envelope and height of the approved dwelling under DA2021/0372 and the proposed minor changes to the built form are not considered to result in unreasonable view loss to adjoining neighbours. District view over the proposed dwelling would be retained.

Concern was also raised with regards to proposed landscaping within the rear garden and impacts to district views. The proposed modification does not seek to alter the approved landscape plan, and the existing garden bed at the rear of the site is proposed to be retained. No new substantial trees are proposed as part of this application. Furthermore, the objectives of clause C1.3 View Sharing of P21 DCP specifies that canopy trees take priority over views.

C1.4 Solar Access

Shadow diagrams were not submitted with this application. However, the proposed modification maintains the general form and height of the approved dwelling under DA2021/0372. The modifications would also result in a reduction in building envelope. Overall, the proposed modifications are not considered to result in additional overshadowing impacts and the proposal is seen to be consistent with the objectives of this Clause and is therefore supported on merit.

C1.5 Visual Privacy

The proposed changes to windows are minor and not anticipated to give rise to unreasonable privacy impacts. The general positioning and size of these windows will remain consistent with that approved under DA2021/0372.

A submission has been received by the adjoining neighbour to the east (No.25 Hillcrest Avenue) in relation to privacy impacts. This submission raised concerns with the rear (east) facing windows of the proposed upper floor addition adjoining the ensuite and walk in wardrobe. These windows were approved within the original application (DA2021/0372) and will be generally consistent with this approval. Additionally, these windows are proposed to be setback from the eastern (rear) boundary by an additional 1.0m from that approved under DA2021/0372, resulting in these windows being approximately 20.0m from the rear boundary. Given this spatial separation, these windows would meet the requirements of this control which specifies that adjoining properties are to be protected from direct overlooking within 9.0m. In addition, these windows would serve an ensuite and walk in robe which are not considered high usage areas. As such, these windows are not considered to result in unreasonable privacy impacts to this neighbour.

C1.14 Separately Accessible Structures

A condition was imposed on the original consent to ensure that the detached studio above the garage is not used for the purposes of separate habitation (i.e. secondary dwelling or similar) and cooking facilities, such as stoves and ovens, are not allowed. The proposed modification does not seek to amend the use or floor plan of this studio and this condition will be retained on the consent.

C1.17 Swimming Pool Safety

The proposed modification seeks retrospective approval for the demolition of a swimming pool. The submitted plans indicate a new pool and pavers within the rear garden. However, as specified on the plans, this new pool is part of this application and will be applied for under a separate Complying

Development Certificate. A condition has been imposed specifying that no new pool is approved.

D9.7 Side and rear building line

Description of non-compliance

The control requires development to be setback at least 2.5m from one side boundary, 1.0m from the other side boundary and 6.5m from the rear boundary for structures other than driveways, fences and retaining walls.

North-western side boundary

The proposed modification works will not alter the side setback of the approved dwelling to north-western side setback. The setback, form and scale of the resultant dwelling will be consistent with the original approval. The proposed modifications will increase the side setback of the proposed cabana to 1.3m (from 1.25m). As such, the proposal is considered to meet the objectives of this control, is consistent with the original DA assessment and is therefore supported on merit.

South-eastern side boundary

The proposal will retain the approved setback to the south-eastern side boundary and comply with the 1.0m requirement with the exception of a small portion of the new lower ground floor terrace, which would be setback 0.5m from the south-eastern side boundary. This terrace would be an open structure, of minimal bulk and scale and would not result in any unreasonable amenity or streetscape impacts. As such, the minor additional non-compliance is considered to meet the objectives of this control, is consistent with the original assessment and is therefore supported on merit.

Rear boundary

The proposed development will comply with the 6.5m rear setback control and does not propose any new structures within this setback area. The submitted plans indicate a new pool and pavers within this rear setback area, however, as specified on the plans, this new pool is not subject of this modification application and will be applied for under a separate Complying Development Certificate. A condition is imposed specifying that no new pool and associated pavers is approved as part of this application.

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.

D9.9 Building envelope

The modification will result in a minor reduction in building envelope non-compliance and will not result in an increased building envelope encroachment. As such, the outcomes of the original assessment and consistency with the control objectives are maintained.

D9.11 Landscaped Area - Environmentally Sensitive Land

The original application DA2021/0372 was supported with a total landscaped area of 425.5m² or 45%. The proposed modifications will result in a total landscaped area of 483.4m² 51.3%. Hence, the proposed modifications will result in an improvement to the non-compliance approved as part of the original application and is therefore supported in this instance. The proposed modification does not seek additional of tree or vegetation removal and the landscaping outcome of the site is retained.

It should be noted that the submitted plans indicate a new pool and pavers within the rear garden.

However, as specified on the plans this new pool is not subject of this modification application and will be applied for under a separate Complying Development Certificate. As such, this area was included in the landscaped area calculation for this application. If approved, a condition is to be imposed on any consent specifying that no new pool or associated paving in the rear garden is approved. Nevertheless, if this new pool is considered within the landscaped area calculation, the landscaped area would be calculated at 443.5m² or 47.1% which would still result in an improvement to the non-compliance approved as part of the original application.

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

The proposed modifications will maintain the general form, envelope and height of the approved

dwelling under DA2021/0372. Overall, the the proposed modification will result in a lesser habitable floor area, an increase in landscaped area, and the resultant development will retain the general form of the approved dwelling, garage and studio. The minor changes are not considered to result in any unreasonable amenity impacts to adjoining neighbours or adversely impact the character of the approved development.

One (1) submission was received in response to the neighbour notification. This submission raised concerns with unauthorised works, visual impact of the development, potential view loss, privacy impacts, landscaping and amenity impacts associated with the approved solid fuel heater. These matters have been addressed within the report and are not considered to warrant refusal or further modification of this application.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance, the proposal represents a minor change in the built form of that approved under DA2021/0372 and the resultant development is suitable and appropriate for the subject site for the reasons outlined in this report.

Accordingly, the application is recommended for approval subject to modified conditions. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant **approval** to ModificationApplication No. Mod2021/1008 for Modification of Development Consent DA2021/0372 granted for Demolition and construction of a new dwelling on land at Lot 2 DP 1106194,32 Grandview Parade, MONA VALE, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supportingDocumentation 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
4.55_A010 - Demolition Plan	Undated; Received: 03/02/2022	John Bohane Architecture
4.55_A105 Rev.B - LG - Proposed - Lower Ground Floor Plan	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A106 Rev.B - G - Proposed - Ground Floor Plan	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A107 Rev.B - UL- Proposed - Upper Floor Plan	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A302 Rev.A - Site Elevations - East & West	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A301 Rev.A - House - Elevations - North & South	05/10/2021; Received: 11/02/2022	John Bohane Architecture

4.55_A303 Rev.A - House - Elevations - East & West	05/10/2021 ; Received: 11/02/2022	John Bohane Architecture
4.55_A304 Rev.A - Garage & Studio - Elevations - East & West	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A403 Rev.A - Site Sections - East & West	05/10/2021; Received: 11/02/2022	John Bohane Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Letter	24/01/2022	Douglas Partners
BASIX Certificate (No.1180596S_02)	11/02/2022	Greenview Consulting Pty Ltd
NatHERS Certificate (Certificate No.0005833074-01)	11/02/2022	Greenview Consulting Pty Ltd

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 3A No Works on Adjoining Land to read as follows:

No Approval is granted under this consent for any works within or on the property boundaries of adjoining privately owned land.

Reason: To ensure compliance with the terms of this consent.

C. Add Condition 3B No Approval for New Swimming Pool to read as follows:

No Approval is granted under this consent for a new swimming pool or associated paving within the rear garden.

Reason: To ensure compliance with the terms of this consent.

D. Add Condition 11A Structural Adequacy and Excavation Works to read as follows:

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety

E. Add Condition 22A Retaining Walls to read as follows:

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety