

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0389
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 1 DP 450305, 3 Bynya Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2019/0649 granted for alterations and additions to a dwelling house including swimming pool and spa
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Susan Lorraine Mozell
Applicant:	Catherine Finlay

Application Lodged:	17/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/06/2021 to 08/07/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: %
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Modification is sought to development application DA2019/0649 for the alterations and additions to the existing dwelling house. The proposed modifications are as follows:

Roof Level:

- Solar panels to the roof
- Two smaller skylights instead of two as approved under DA2019/0649
- Roof extended adjacent to garage and western entry

First Floor – Entry/Garage Level:

- An interior entry door from the garage to the house,

- An altered swing to the west terrace gate,
- Retaining more of the existing structure to reduce demolition.
- New 600mm retaining wall to the northern side of the driveway
- A door (D.1a) between the kitchen and study.
- A re-design of the kitchen (the size of the pantry has been increased and the size of the powder room has been decreased)
- A reduction in the size of the ensuite, a double vanity and increasing the privacy of the toilet.
- A corner view window to the master bedroom.
- A gas fire pit / BBQ on the western terrace
- A gas fireplace with media over to replace the existing fireplace in the sitting room.
- A spa for two is proposed off the southern end of the east facing balcony.
- Reduction in the width of the balcony adjoining the sitting/dining room
- Decrease in the size of the living room and extension of balcony

Ground Floor:

- Relocating the shower room next to the kitchenette and moving the walls and W15,16 & 17 to establish 3 bedrooms.
- Relocating storage area to west of the bedroom hallway.
- Altering the approved guest ensuite and wetroom into 2 bathrooms.
- Retaining more of the existing structure to reduce demolition.
- New stairs off the eastern balcony, connecting down to the pool level and fire exit.
- Addition of new storage area
- Brick wall on northern balcony face
- Reduction in the width of the balcony adjoining bedrooms
- New windows in southern elevation

Lower Ground Floor:

- A re-design of the bunk room.
- Relocation of the laundry cupboard.
- Wetbar/ kitchenette/ laundry cupboard relocated to the hallway
- New media joinery in the studio/pool house
- A new separate powder room under the stairs.
- New exterior stairs from the pool level to the carport area (fire exit).
- A pool redesign to include an attached square spa instead of the approved separate circular spa. The pool size does not alter, however the pool fence is re-aligned to increase circulation space around the western edge of the pool.
- New timber deck on ground to allow access under the pool deck to equipment.
- New level concrete flooring in exterior storage area with ramp.
- Replace existing exterior timber staircase from ground to lower ground in metal.
- Brick wall on northern balcony face
- Removal of tree on northern boundary

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 - 4.3 Height of buildings

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.8 Building envelope

Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 1 DP 450305 , 3 Bynya Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Bynya Road. The property also has a frontage to Surf Road.</p> <p>The site is irregular in shape with a frontage of 50m along Bynya Road and frontage of 45m to Surf Road. The site has a depth of 35m. The site has a surveyed area of 1060m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling house with large undercroft area at the Surf Road Frontage.</p> <p>The site has a steep fall from Bynya Road across the site to the Surf Road frontage. The site has slopes ranging between 15 and 25 degrees across the building platform.</p> <p>The site perimeter of the site consists of canopy tree planting with good quality vegetation within the southern corner of the site.</p> <p>Adjoining and surrounding development is characterised by two and three storey dwellings sited upon steep sites generally below the canopy tree level. The site has only one direct adjoining property which is 9 Surf Road consisting of a</p>

two/three storey dwelling and swimming pool.

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:

- **NO721/02** - Development Application for Additions to the dwelling house and construction of new driveway, approved on 21 October 2003.
- **DA2019/0649** (subject of this modification) - Development Application for Alterations and additions to a dwelling house including swimming pool and spa - Approved 20 August 2019.

APPLICATION HISTORY

10/09/2021

Following concerns raised by Council, amended plans were received which removed the proposed carport within the front setback and reverted the garage to the originally approved design.

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 DA2019/0649, 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 largely internal and do not alter the overall height, bulk and general aesthetic of the approved dwelling (DA2019/0649). Furthermore, no cut and fill is involved, no significant vegetation is to be removed and the privacy, overshadowing and view impacts of the modifications on the sole adjoining neighbour are considered to be minimal.</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 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 DA2019/0649 for the following reasons:</p> <p>The proposed modifications do not change or introduce an additional/distinct land use, the modifications do not materially alter the impacts of the approved development and maintain the overall height, scale and general aesthetic of the approved proposal.</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 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan.</p>
(d) it has considered any submissions made concerning the proposed modification within any period prescribed	No submissions were received in relation to this application.

Section 4.55(1A) - Other Modifications	Comments
by the regulations or provided by the development control plan, as the case may be.	

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and 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. Additional information was requested in relation to amended plans.</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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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 24/06/2021 to 08/07/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification includes an application to remove 1 x <i>Glochidion ferdinandii</i> (Cheese Tree), 6m ht. The Arborist's Report submitted with the application prepared by Urban Arbor is noted.</p> <p>The report indicates that the tree is in poor condition and in decline. No objections are raised to approval in this instance, subject to conditions, including replanting.</p>
NECC (Bushland and Biodiversity)	<p>The modification seeks approval for internal alterations and additions to an approved dwelling including, solar panels on the roof, roof over carparking, minor internal changes to the layouts, retaining the existing balconies and just squaring them off - new spa on balcony, gas firepit on rear balcony, replace interior fireplace with gas unit, retaining more existing structure to reduce demolition, more lower ground floor spa to connect to pool, new external staircase to link levels and fire egress to ground.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor <p>The application requires the removal of a 6m Cheese Tree (<i>Glochidion ferdinandii</i>). The submitted Arborist Report 'Assessment of Condition of One Tree' (Urban Arbor 2021) determined the tree to be displaying signs of reduced health for the species, with apical dieback in the upper tips of the crown (apical dieback is when the tree starts to dieback from the top downwards). Approximately 10% of the overall crown area has died back. Apical dieback is often an indicator of root issues. Significant development works are approved in the TPZ and SRZ of the tree, including the construction of a spa and hard surfacing. These structures encroach into the TPZ of tree 1 by 25% (5.2m²) and significantly into the SRZ, indicating that the condition and stability of the tree will potentially be impacted.</p>

Internal Referral Body	Comments
	Given the likely ongoing impacts from the approved development and subject to replanting, Council's Natural Environmental Unit - Biodiversity find the application to be consistent against relevant environmental controls.
NECC (Development Engineering)	<p>The submitted Geotechnical Engineer's letter for the proposed modifications is acceptable. The proposed carport over the existing driveway off Bynya Road is not supported as the driveway grades do not comply with AS/NZS 2890.1:2004 for a parking area. Also the parking of vehicles in this position would not allow vehicles using the garage to exit in a forward direction.</p> <p>Provided the proposed carport structure is removed from the drawings, Development Engineers raise no objection to the modifications with no additional or modified conditions of consent recommended.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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. A420032, dated 09/06/2021).

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

SEPP (Infrastructure) 2007

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 provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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	Complies
Height of Buildings:	10m *Pursuant to clause 4.3 (2D)	10.303m	Unaltered	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The modification does not seek any further breach to the building height to that which was approved by Northern Beaches Council within DA2019/0649. As such, the development is seen to continue meeting the objectives of this Development Standard and is recommended to be supported on merit.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line (Bynya Road - West)	6.5m	4.8m	3.1m (new roof)	No
Front building line (Bynya Road - East)	6.5m	6.5m Balcony 3.8m Pool	1.7m Deck 4.9m Pool 3.9m Pool Coping 4.0m Access stairs	No
Side building line	1m (north)	1m	1m	Yes
Building envelope	3.5m (north)	Garage - Outside Remainder of facade - Outside, however existing non compliance	Garage - Outside Portion of ground floor balcony brick wall - Outside Remainder of facade - Outside, however existing non compliance	No
Landscaped area	60%	46% 487.5m ² *With permitted variation clause clause 551m ² /52%.	unaltered	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The approved development includes three storeys, where the locality calls for two storey development. The proposed modifications do not alter the approved number of storeys or overall height of the

development and the built form of the proposal would remain generally consistent with the approved development.

As such, the proposed modifications achieve the intention of the desired character of the area and are acceptable in this regard.

C1.5 Visual Privacy

Visual privacy and overlooking is considered for the adjoining property to the north known as 9 Surf Road. The adjoining property to the north is the only direct neighbour for the subject site.

The modification application seeks to add brick walls to the northern elevation of the ground floor and lower ground floor balconies which would reduce overall privacy impacts. The upper floor balcony would be reduced in size and would maintain a privacy screen.

The application seeks to remove a tree on the northern boundary adjacent to the pool. To ensure a reasonable level of privacy is maintained for the dwelling to the north, the original consent recommended a condition (condition 16) for additional plantings along the northern boundary between the terrace and the pool capable of reaching 4m in height. This condition is not altered or removed by this modification. Subject to compliance with this condition for additional planting, the proposal would retain a reasonable level of privacy between dwellings.

D12.5 Front building line

The proposed modification seeks the following works within the front setback:

Primary front setback (Bunya Road - West)

- Extension of approved garage and dwelling roof would be 3.1m - 4.6m from the front boundary.

Secondary front setback (Bunya Road - East)

- New timber deck on ground to allow access under the pool deck to equipment would be 1.7m - 4.0m from the front boundary
- The new access stairs would be 4.0m from the front boundary
- The location of the pool and pool coping would remain consistent with the original approval.

In accordance with Clause D12.5, the front setback requirements is not applicable to retaining walls.

Merit consideration

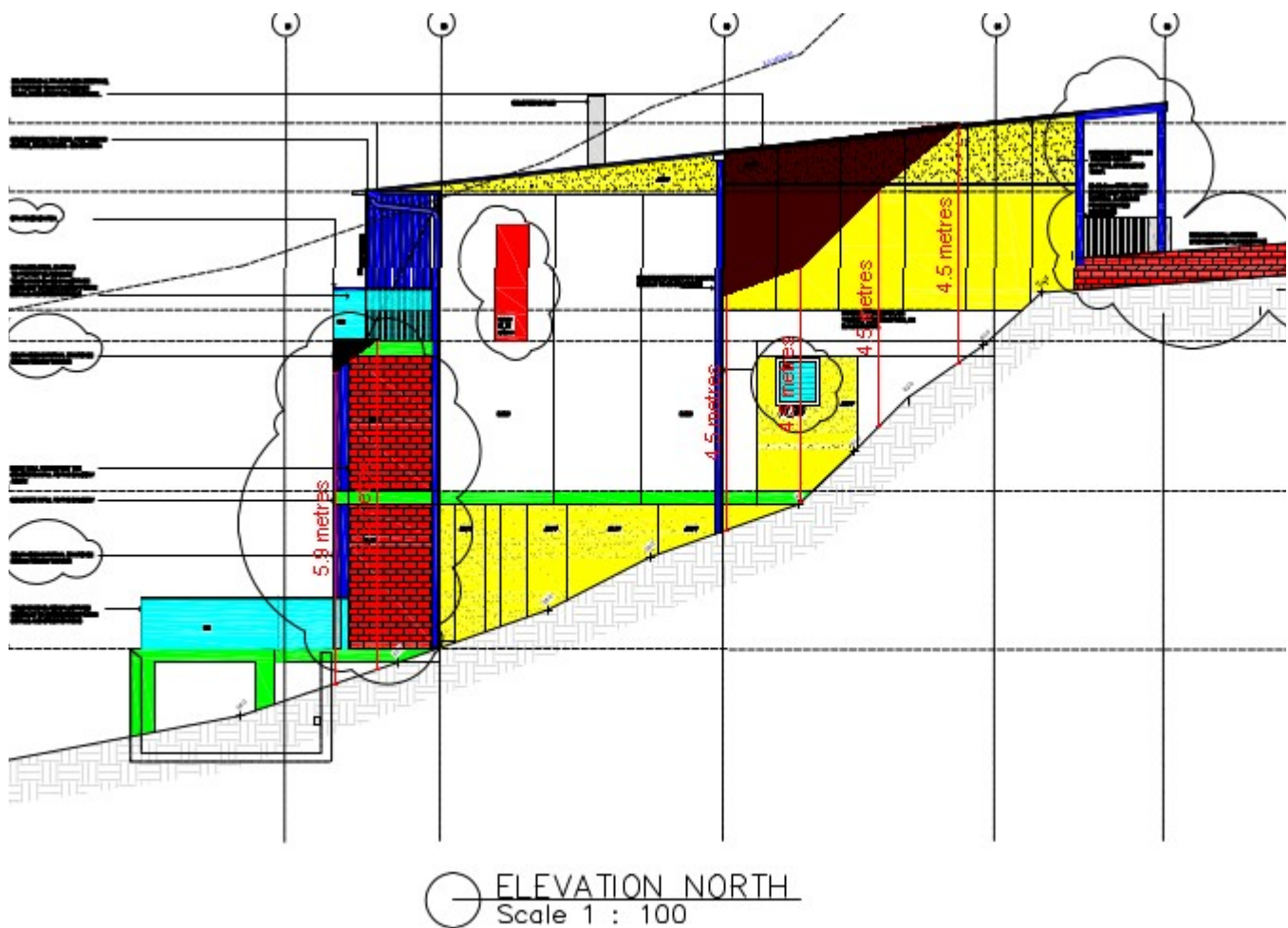
The proposed modifications within the front setback would result in a minor change in the approved built form. The proposed changes are not considered to result in unreasonable amenity impacts of the adjoining properties or the streetscape. The proposed modification will generally retain the scale and appearance of the of the approved dwelling, with vegetation screening to be retained to surround the dwelling. The new structures within the front setback would be open structures of minimal bulk and scale. The proposed additions do not require the removal of any significant vegetation or canopy tree planting.

Overall, the proposed development is considered to achieve the outcomes of the Pittwater DCP and the

variation not considered to have a detrimental impact upon the streetscape or adjoining properties. Therefore, the variation to the control is supported in this circumstance.

D12.8 Building envelope

The proposed modification would result in a minor additional breach to the building envelope on the northern elevation. This breach would result from the top of the new brick wall on the northern edge of the "ground floor" balcony. The approved envelope breach as a result of the new garage configuration would remain unaltered from the proposed modifications. The envelope non-compliance is represented in black on the figure below:



Overall, it is considered that the minor additional breach in building envelope is not considered to result in unreasonable impacts to the character of the development as viewed from the street and would not result in unreasonable amenity impacts to the adjoining neighbour. The envelope breach would be a direct result of existing built form and the significant slope of the site. Therefore, a variation to the control can be considered in this circumstance given the minimal impacts the variation presents in terms of amenity and visual impact from the streetscape.

D12.10 Landscaped Area - Environmentally Sensitive Land

Development Application No.DA2019/0649 was approved with an overall landscaped area of 46%. The

modification works are predominantly over existing approved hard surface area and the proposal does not seek to reduce the amount of landscaped area on site. Nevertheless, consideration of the non-compliance in relation to the proposed works are considered. Overall, it is considered that the resultant landscaping and stormwater arrangement will remain acceptable (subject to conditions). The proposal would retain adequate areas for planting to visually reduce built form. The application has been reviewed by Council's Development Engineer, Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal. The removal of one 6m Cheese Tree (*Glochidion ferdinandi*) is considered acceptable subject to replacement planting. Further, the proposed changes will not result in an unreasonable impact on the amenity and solar access provided for neighbouring properties. Suitable conditions are retained on the original consent which ensures the protection of existing trees and vegetation and the provision suitable screen planting. No conditions in relation to additional plating or protection of trees are removed as part of this modification.

Based on the above, the proposed modification are considered to continue satisfying the outcomes of this clause and the non-compliance is supported on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

- Consistent with the objectives of the DCP

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0389 for Modification of Development Consent DA2019/0649 granted for alterations and additions to a dwelling house including swimming pool and spa on land at Lot 1 DP 450305,3 Bynya Road, PALM BEACH, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
101B - PROPOSED SITE PLAN	01/09/2021	DBCF Pty Ltd
105B - PROPOSED ROOF PLAN	01/09/2021	DBCF Pty Ltd
106B - PROPOSED FIRST FLOOR PLAN	01/09/2021	DBCF Pty Ltd
107A - PROPOSED GROUND FLOOR PLAN	18/05/2021	DBCF Pty Ltd
108A - PROPOSED LOWER GROUND FLOOR PLAN	18/05/2021	DBCF Pty Ltd
109B - ELEVATION NORTH	01/09/2021	DBCF Pty Ltd
110B - ELEVATION SOUTH	01/09/2021	DBCF Pty Ltd
111B - ELEVATION EAST	01/09/2021	DBCF Pty Ltd
112B - ELEVATION WEST	01/09/2021	DBCF Pty Ltd
113A - SECTION A-A	18/05/2021	DBCF Pty Ltd
114A - SECTION B-B	18/05/2021	DBCF Pty Ltd
115A - SECTION C-C	18/05/2021	DBCF Pty Ltd
116B - SECTION D-D	01/09/2021	DBCF Pty Ltd
118A - POOL DETAILS	11/01/2021	DBCF Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 Rev.C - STORMWATER MANAGEMENT PLAN	11/06/2021	iSTRUCT Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A420032)	09/06/2021	DBCF Pty Ltd
Arborist Report (210310_3 Bynya_St)	10/03/2021	Urban Arbor

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

f) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
117B - LANDSCAPE & WMP PLAN	01/09/2021	DBCF Pty Ltd

Waste Management Plan		
Drawing No.	Dated	Prepared By
117B - LANDSCAPE & WMP PLAN	01/09/2021	DBCF Pty Ltd

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

B. Add Condition 35 - Compliance with Other Department, Authority or Service Requirements to read as follows:

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	06/07/2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

C. Add Condition 36 - Required Tree Planting to read as follows:

Trees shall be planted in accordance with the following:

- i) 1 tree capable of attaining a minimum height of 5m at maturity; located within the grounds of the property; minimum pot size 200mm

Tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings and other trees.

Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views.

Native tree planting species shall be selected from Council's list:
www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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

Reason: To maintain environmental amenity.

D. Add Condition 37 - Dead or Injured Wildlife to read as follows:

If construction activity associated with this development results in injury or death 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.

E. Add Condition 38 - Replacement of Canopy Trees to read as follows:

At least 2 locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

F. Add Condition 39 - 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 Certifying Authority prior to issue of any Occupation Certificate.

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

G. Add Condition 40 - Replacement of Canopy Trees to read as follows:

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

H. Add Condition 41 - No approval for hardstand parking area to read as follows:

No approval is granted under this consent for the use of the driveway adjacent to the garage as a separate parking area.

Reason: To ensure the use is consistent with the development consent.

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

Signed



Gareth David, Planner

The application is determined on 16/09/2021, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager