



*statement of modification*



## **MODIFICATIONS TO DA2020/0096**

26 RALSTON ROAD  
PALM BEACH NSW 2108

July 2024

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## *introduction*

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

This statement is informed and accompanied by the following documentation:

- Architectural Plans by Crawford Architects
- Arboricultural Impact Statement by Red Gum Horticultural
- Stormwater Management Plans by Capital Stormwater Consultants
- Bushfire Report by Bushfire Consulting Services

## *site details*

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

Lot 4, the western lot, is slightly irregular in shape, with a 18.29m wide frontage to the southern side of Ralston Road, a maximum depth of 46.055m and a total area of 766.3m<sup>2</sup>. Lot 5, the eastern lot, is also slightly irregular in shape, with a 16.765m wide frontage to the southern side of Ralston Road, a maximum depth of 45.79m and a total area of 731.6m<sup>2</sup>.

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

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

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

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





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

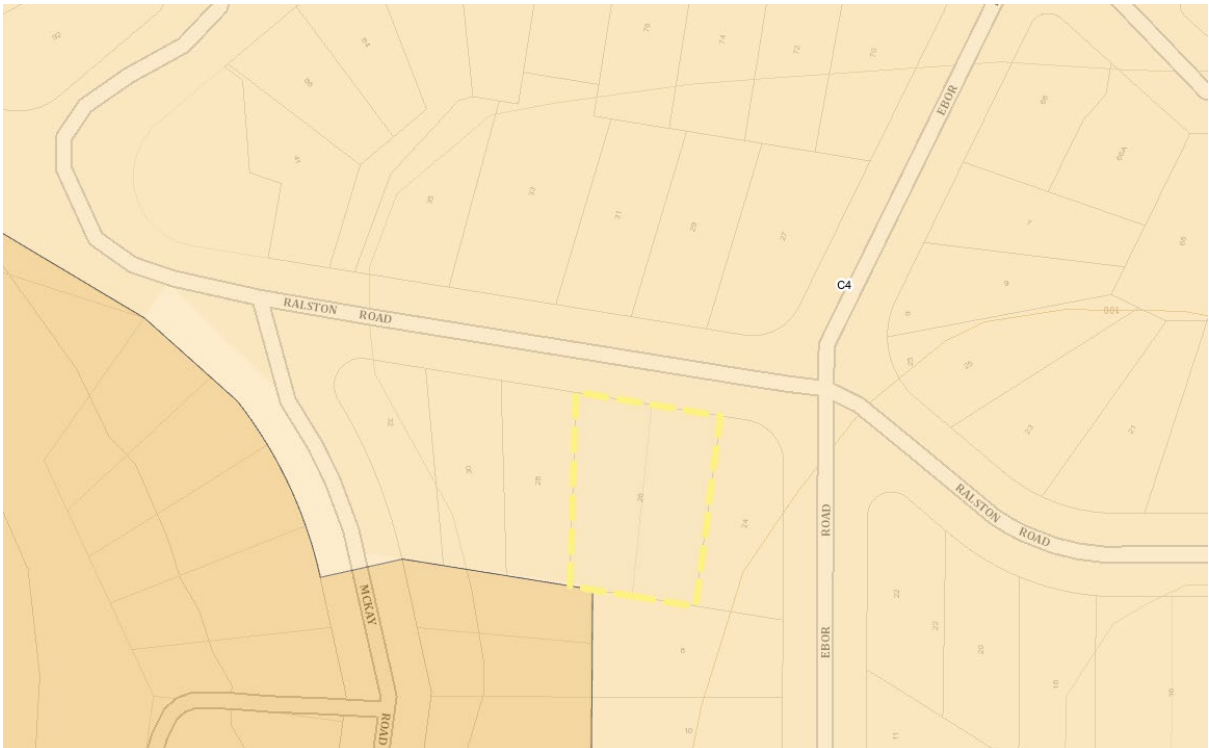


**Figure 2 – The site as seen from Ralston Road**  
**Source: NBP**





**Figure 3 –The existing dwelling**  
**Source: NBP**



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

## background

On 9 September 2020, DA2020/0096, which sought consent for the demolition of the existing dwelling sited across both lots and the construction of two new dwelling houses, one of each of the lots, was approved under the delegation of the Development Determination Panel of Northern Beaches Council. An indication of the siting of the approved dwellings and the approved access arrangement is shown in Figure 5, below.

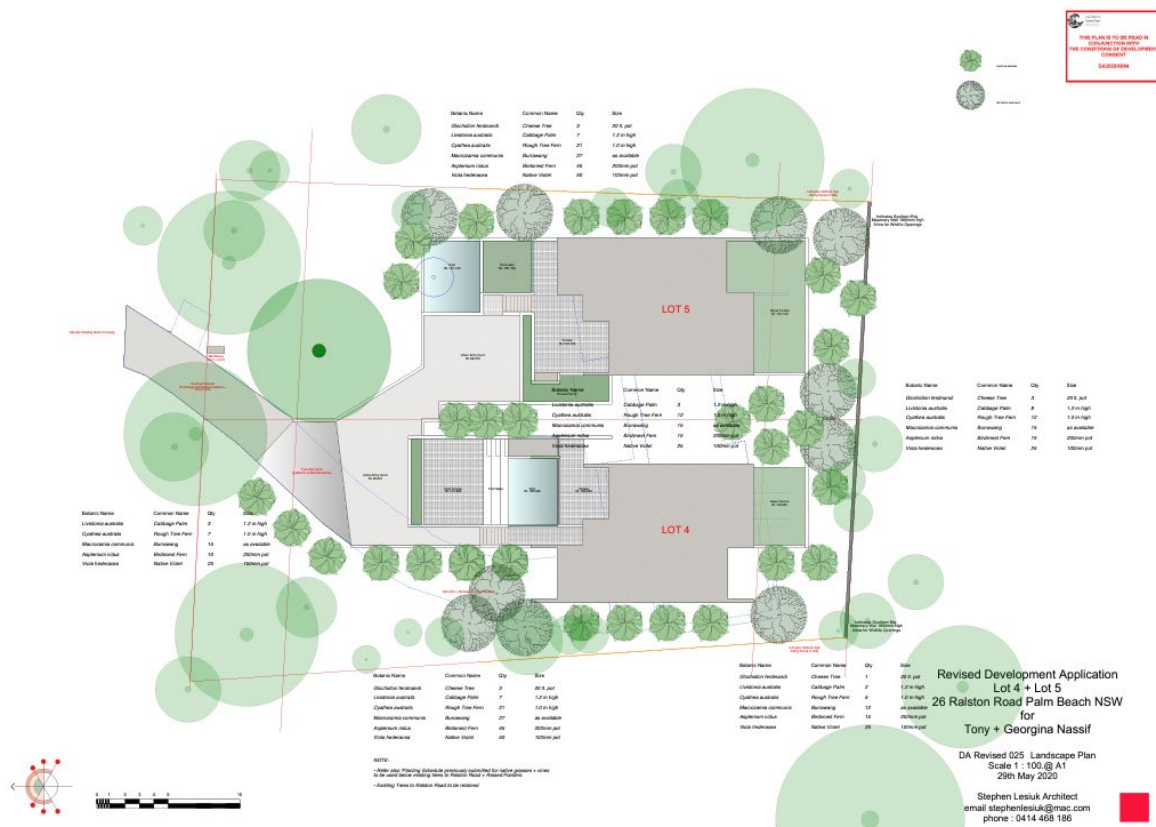


Figure 5 – Approved Landscape Plan by Stephen Lesiuk Architect  
Source: Northern Beaches Council

On 27 February 2024, Modification Mod2023/0676 was approved by Council, under manager delegation.

As of the date of this report, a Construction Certificate has not been issued and works have not commenced.

The application seeks to modify Condition 9 of DA2020/0096, which currently reads as follows:

***On-site Stormwater Detention Details***

*The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's PITTWATER DCP21, and generally in accordance with the concept drainage plans prepared by cec capital engineering consultants, drawing number SWDP01 to SWDP05, dated 03/02/2020.*

*Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering. The submitted drainage plans must be amended to address the following requirements:*

- *The proposed detention tanks are located below the garage. As result this requires adequate ventilation to be provided for free air circulation from outside the footprint of the proposed dwellings.*
- *The tank must be amended to provide for two pits outside of the proposed garages. The pits are to be for access to the tank and a discharge control pit. The pits must permit free air circulation to the below ground tank.*

*Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.*

*Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.*

In response to changes made to the design of the dwellings both during the original DA process and in the subsequent modification, alterations are also required to the design of the stormwater management system. Amended Stormwater Management Plans have been prepared to demonstrate the altered stormwater management solution, and we ask that Condition 9 be amended to refer to these amended plans.

For completeness, the Amended Stormwater Management Plans have also been reviewed by the Project Arborist, who has provided recommendations to ensure that the altered design will not result in any additional impacts upon trees nominated for retention.

The application also seeks to rely upon an Amended Bushfire Report, noting that the hazard classification has increased to Flame Zone. This also necessitates minor amendments to the design of the dwellings, which are reflected in the Amended Architectural Plans.

Aside from reference to the amended documentation, no further changes to the conditions of consent are proposed or required.

## legislation, plans and policies

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

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

## local environmental plan

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

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

Clause	Standard	Approved	Proposed	Compliance
Zone C4 Environmental Living				Yes
4.3 Height of buildings	8.5m	Lot 4: 7.6m Lot 5: 6.5m	No change.	Yes
7.1 Acid sulfate soils	Class 5			Yes
7.2 Earthworks				Yes
7.6 Biodiversity			No change.	Yes
7.10 Essential services				Yes



## *development control plan*

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

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

Clause	Control	Approved	Proposal	Compliance
			upon existing canopy trees.  No additional tree removal is proposed.	
B5.15 Stormwater			Amended Stormwater Management Plans accompany the application.	Yes
B6.2 Internal driveways	Internal Driveways are to be designed and constructed to provide safe access and shall have a maximum gradient of 1:5 (V:H).  Recommended maximum gradient of an Internal Driveway for a distance of 2m on the approach to a garage, parking area or carport is 1:20 (V:H).		No change.	Yes
B6.3 Off-Street Vehicle Parking Requirements	2 spaces for each dwelling, compliant with AS2890.1		No change.	Yes
B8.1 Construction and Demolition – Excavation and Fill				Yes
B8.3 Construction and Demolition – Waste Minimisation				Yes
B8.4 Construction and Demolition – Site Fencing and Security				Yes
C1.1 Landscaping			No change.	Yes

Clause	Control	Approved	Proposal	Compliance
C1.2 Safety and Security				Yes
C1.3 View Sharing	All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.		No change.	Yes
C1.4 Solar Access	The main private open space of each dwelling and windows to principal living areas are to receive 3 hours of direct sunlight between 9am and 3pm in midwinter.		No change.	Yes
C1.5 Visual Privacy	Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation.		No change.	Yes
C1.6 Acoustic Privacy			No change.	Yes
C1.7 Private Open Space			No change.	Yes
C1.12 Waste and Recycling Facilities	All development that is, or includes, demolition and/or		The Approved Waste Management Plan	Yes



Clause	Control	Approved	Proposal	Compliance
	construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan		remains relevant to the modified proposal.	
C1.13 Pollution Control			No change.	Yes
C1.17 Swimming Pool Safety			No change.	Yes
C1.23 Eaves			No change.	Yes
D12.1 Character as Viewed from a Public Place	Built form is to be secondary to landscaping.		No change.	Yes
D12.3 Building Colours and Materials			No change.	Yes
D12.5 Front Building Line	6.5m (minimum)	Lot 4: 14.3m Lot 5: 14.5m	No change.	Yes
D12.6 Side and Rear Building Line	1m to one side, 2.5m to the other.  6.5m to rear.	Lot 4: 1.1m to one side, 2.9m to the other and 6.7m to rear.  Lot 5: 1.1m to one side, 2.8m to the other and 6.7m to rear.	No change.	Yes
D12.8 Building Envelope	A 45 degree plane projected from a point 3.5m above the side boundary.	Minor protrusion on western elevation of both dwellings.	No change.	Yes
D12.10 Landscaped Area –	60% minimum	Lot 4: 61.1% Lot 5: 64.6%	No change.	Yes

Clause	Control	Approved	Proposal	Compliance
Environmentally Sensitive Land				
D12.11 Fences - General			No change.	Yes
D12.13 Construction, Retaining Walls, Terracing and Undercroft Areas				Yes
D12.14 Scenic Protection Category One Areas			No change.	Yes

## *state environmental planning policy (resilience and hazards)*

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### **Remediation of Land**

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

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

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

## *state environmental planning policy (sustainable buildings)*

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The modifications do not alter any of the recommendations of the approved BASIX Certificates. As such, amended BASIX Certificates are not required to accompany the modified development.

## *environmental planning and assessment act*

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

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

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



- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

### **Minimal environmental impact**

The amendments have been designed to facilitate adequate stormwater management and to meet the Flame Zone design requirements on the site. The modifications proposed do not result in any adverse impacts upon the surrounding natural environment or the amenity of neighbouring properties, and the resultant development remains consistent with the objectives of PLEP 2014 and P21 DCP.

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

### **Substantially the same**

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

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

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

- The description of the development remains unchanged.
- The layout, form and setbacks of the two dwelling houses remain unchanged.
- The height of the dwellings remains unchanged.
- The location and use of individual rooms remain unchanged.
- The driveway location remains unchanged.
- The impacts associated with the approved development with respect to solar access, views and privacy remain unchanged.
- The landscaped treatment of the site remains unchanged.
- The impact upon surrounding trees and vegetation remains unchanged.

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

## Section 4.15 of the EP&A Act

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

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

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

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

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

Clause	Provision	Comment
(a)	<p><i>the provisions of—</i></p> <ul style="list-style-type: none"><li><i>i. any environmental planning instrument, and</i></li><li><i>ii. any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i></li><li><i>iii. any development control plan, and</i></li><li><i>iv. any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i></li><li><i>v. the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i></li></ul> <p><i>that apply to the land to which the development application relates,</i></p>	<p>The relevant provisions of PLEP 2014, all relevant SEPPs, and P21 DCP have been considered and addressed in this statement.</p>
(b)	<p><i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i></p>	<p>The likely impacts of the proposed development have been addressed with respect to relevant plans and policies in this statement. The proposed development will not result in any unacceptable impacts upon the natural or built environment, or any social or economic impacts in the locality.</p>

Clause	Provision	Comment
(c)	<i>the suitability of the site for the development,</i>	The subject site remains suitable for the proposed development.
(d)	<i>any submissions made in accordance with this Act or the regulations,</i>	The application will be notified to all neighbouring properties, with any submissions received to be considered by Council.
(e)	<i>the public interest.</i>	The proposed development is in the public interest, in so far as it is consistent with the objectives and outcomes of PLEP 2014 and P21 DCP.

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



## *conclusion*

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The proposed modifications are beneficial and facilitative, providing a suitable stormwater management solution in response to previous amended to the design of the dwellings and increased safety in the event of a bushfire. The modified proposal does not result in any new areas of non-compliance, is of minimal environmental impact and remains substantially the same as that which was originally approved. As such, Council can be satisfied that the application can be appropriately addressed under the provisions of s4.55(1A) of the EP&A Act.

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



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