

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0221
----------------------------	--------------

Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot A DP 342891, 20 Palm Beach Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2020/0214 granted for alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Paul Joseph Meehan
Applicant:	Nanna Margrethe Lesiuk

Application Lodged:	06/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/05/2021 to 27/05/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 14.35%
Recommendation:	Approval

EXECUTIVE SUMMARY

The modification application is sought under Section 4.55(2) is to a development consent (DA2020/0214) that was previously determined by then Development Determination Panel. As such, the modification application is referred to the Development Determination Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Development Consent No. DA2020/0214 granted for alterations and additions to a dwelling house.

The modification application seeks approval for the following changes:

- New skillion roof to link the approved upper floor to the existing;
- External modifications including stairs, balustrade, retaining wall, formalisation of north facing patio area;
- Retention of lawn area on the eastern side of the dwelling;
- Removal of previously approved pool and spa.

Ground Floor

- Internal reconfiguration to remove the eastern-most bedroom 2, relocate stairs to the southern side of the dwelling

First Floor

- Internal reconfiguration for an open-plan living area, removal of the western bathroom for a new entry, relocate main internal stairs and propose new internal stairs to the second floor study loft

Second Floor

- Internal reconfiguration to include a recessed terrace and bedroom in an area previously approved as a study, provision of an ensuite to the main bedroom, relocation of the internal stairs, storage room above the garage and a study loft within the northern-most roof void area.

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 - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear 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 A DP 342891 , 20 Palm Beach Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site is known as 20 Palm Beach Road, Palm Beach and is legally referred to as Lot A DP 34291. The site consists of one (1) allotment located on the eastern side of Palm Beach Road.</p> <p>The site is irregular in shape with a frontage of 20.7m along Palm Beach Road and a depth of 31.5m. The site has a surveyed area of 524.8m². Pedestrian and vehicular access is gained via the Palm Beach Road frontage.</p> <p>The site is located within the E4 Environmental Living zone and accomodates a two (2) to three (3) storey dwelling house.</p> <p>The slope of the site is 22.3%, falling 7m from the road frontage to the rear boundary.</p> <p>The site constains a modified landscape setting, with vegetation consisting of low-lying shrubs, a sloping lawn area to the rear, palms as well as number of native canopy trees including Tuckeroos.</p> <p>The site is mapped within the Pittwater Geotechnical Hazard Map.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses of varying architectural styles and age within landscaped settings.</p>

Map:



SITE HISTORY

16 June 2008

Development Application No. N0690/07 for the demolition of existing dwelling and construction of a new two storey timber and brick dwelling with a vaulted copper roof was refused by Council's Development Unit.

The Development Application has been refused for the following reasons:

1. Non-compliance with controls and outcomes of Section D12.5 – front building line of Pittwater 21 DCP.
2. Non-compliance with the controls and outcomes of Section D12.6 – side and rear building line of Pittwater DCP with respect to the southern side setback.

1 September 2008

A review of Council's determination to Development Application No. N0690/07 under Section 82A of the Environmental Planning and Assessment Act 1979 resulted in the granting of consent.

9 September 2010

Section 96(1A) Modification Application No. N0690/07/S96/1 to Development Application No. N0690/07 was granted consent.

5 September 2019

Development Application No. DA2019/0827 for alterations and additions to a dwelling house including swimming pool and spa was granted consent.

11 June 2020

Development Application No. DA2020/0214 for alterations and additions to a dwelling house was granted consent under the delegation of Council's Development Determination Panel.

APPLICATION HISTORY

20 July 2021

Public domain site inspection undertaken by the assessing officer due to restrictions in place during the COVID-19 Pandemic. The Council notification sign was in place at the time of the inspection.

28 July 2021

Letter issued by the assessing officer detailing that the application in its current form was unable to be supported due to the following reasons:

1. The modified development is not substantially the same as that which was originally approved; and
2. Front boundary wall/fence
3. Geotechnical issues

10 August 2021

Email correspondence from the Applicant to the assessing officer providing revised plans and a geotechnical addendum letter. These documents were later registered through the NSW Planning Portal on 17 August 2021.

10 August - 26 August 2021

Various phone correspondence between the Applicant and the assessing officer concerning the revised plans received.

31 August 2021

Revised plans (dated: 10/8/21) were provided to Robert Wilcher (via email) who previously made a submission on behalf of the property owners of No. 16 Palm Beach Road.

31 August 2021 - 7 September 2021

Various email correspondence between the assessing officer and the Applicant highlighting inconsistencies with the solar access diagrams provided.

8 September 2021

Revised Solar Access diagrams (dated: 8/9/21) submitted by the Applicant to the assessing officer (via email) that were subsequently certified by the architect on 9 September 2021.

9 September 2021

Revised Solar Access diagrams (dated: 8/9/21) were provided to Robert Wilcher (via email) who previously made a submission on behalf of the property owners of No. 16 Palm Beach Road.

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 DA#####/#####, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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 DA2020/0214 for the following reasons:</p> <p>Whilst the proposed changes result in an increase to the overall building height with the new skillion roof link at the upper floor, it is acknowledged that this modification is to increase the functional area (head height/clearances) that would be otherwise restricted by the previously approved vaulted roof form. Despite this change resulting in a further 100mm breach to approved height, consideration has been given that no unreasonable amenity impacts such as to views or visual privacy would arise as a result of the proposed modifications. It is accepted that the modifications do result in increased solar access impacts to the southern adjoining property at No. 16 Palm Beach Road. However, the extent of these solar impacts are limited and considered acceptable (Refer to Clause C1.4 Solar Access of the P21 DCP for further discussion). It should also be noted that the site falls approximately 7m from the road frontage to the rear boundary, with the greatest extent of this fall being in the vicinity of the existing building footprint. Being on a sloping site, the dwelling house will continue to appear as 2 storeys (being a garage and floor level above) from Palm Beach Road frontage, from the rear, it will appear to be a 2-3 storey development. The remaining changes being largely internal reconfiguration works to the dwelling are not considered to result in any further unreasonable impacts. The proposal also seeks the removal of a previously approved swimming pool, which can assist with providing opportunities for improved landscaped amenity of the site. In this regard, the modifications are considered to be of minor environmental impact. The Consent Authority can therefore be satisfied that the development as modified will be "essentially or materially" substantially the same as the approved development.</p>

Section 4.55 (2) - Other Modifications	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2020/0214 did not require concurrence from the relevant Minister, public authority or approval body.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	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.
(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 96 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 documentation was submitted with the original 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 requested, however in response to issues raised by Council, amended plans were submitted to reduce the overall height of the proposal.</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>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</p>

Section 4.15 'Matters for Consideration'	Comments
	Australia (BCA). This matter has been addressed via a condition in the original consent.
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 13/05/2021 to 27/05/2021 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Stemlet Pty Ltd	PO Box 3856 MOSMAN NSW 2088
Hicksons Lawyers	DX 309 Sydney NSW

The following issues were raised in the submissions and each have been addressed below:

- **The proposal not being “substantially the same development”**

Comment:

The submissions raised concern the proposed works are not substantially the same as those already approved under DA2020/0214. The assessment has found that despite the increase to the overall building height with the new skillion roof link, that the Consent Authority can be satisfied that the development as modified will be "essentially or materially" substantially the same as the approved development. Refer to further discussion under Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 of this report.

- **Inconsistent with the “public interest”**

Comment:

The submissions raised concern that the proposal is inconsistent with the public interest. The assessment of a development's merits requires consideration of the public interest under section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979. In this regard, the assessment has found that the proposal achieves the relevant aims of the PLEP, objectives of the E4 Environmental Living zone and therefore that there are no matters that would justify the refusal of the application in the public interest.

- **Building Height non-compliance from the proposed skillion roof**

Comment:

Concern was raised in the submissions with regards to the building height non-compliance arising from the proposed skillion roof. The modification application seeks a proposed building height of 10.37m (RL 34.30), which results in a 100mm increase to the height approved under Development Consent. DA2020/0214 (RL 34.20). It was also raised that no written justification (Clause 4.6) was submitted to Council with the modification application. In this regard, it should be noted that Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Despite the non-compliance, the assessment has found that the modified development satisfied the underlying of Clause 4.3 Height of Buildings under the PLEP 2014 and should be supported. Refer to further discussion under Clause 4.1 Height of buildings of the PLEP 2014.

- **Building Envelope non-compliance**

Comment:

Concern was raised with the building envelope non-compliance along the southern elevation of the proposed development. Whilst the building envelope breach is largely to the partially vaulted roof form, acknowledgement is given that the roof form (Second Floor) contains habitable rooms. On this basis, the extent of the building envelope breach increases from 3.2m to 3.3m when measured to the uppermost ridge of the skillion roof. Despite the non-compliance, consideration has been given that the breach should be supported on merit. Refer to further discussion under Clause D12.8 Building envelope of the P21 DCP.

- **Landscaped Area non-compliance**

Comment:

Concern was raised with regards to the landscaped area non-compliance arising from the proposed development. An assessment in this regard demonstrated that the modifications result in an overall increase in the resultant landscaped area on site to 43% (226.2sqm) from 36% as

approved under Development Consent No. DA2020/0214. Refer to further discussion under Clause D12.10 Landscaped Area – Environmentally Sensitive Land of the P21 DCP of this report.

- **Overshadowing impacts**

Comment:

Overshadowing concerns were raised in the submissions made by Robert Wilcher on behalf of the property owners of No. 16 Palm Beach Road. The solar access diagrams submitted, demonstrate that a minimum of 3 hours of sunlight between 9am and 3pm on June 21st will be maintained to the main private open space area and the habitable windows of No. 16 Palm Beach Road. Refer to further discussion under Clause C1.4 Solar Access of the P21 DCP of this report.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>16/06/2021:</p> <p>1) There is proposal of new fence to front boundary in the public road reserve, refer Item 15 on the drawing No. MOD.08, Dated 13/4/2021 by Housed Architects.</p> <p>It is noted that at present there is a retaining wall supporting the road embankment and the proposal is unclear that whether this wall will be removed/replaced. And also there are no details of proposed fence. Applicant is advised to provide details of the proposed fence.</p> <p>2) The letter by Ascent Geotechnical Consulting, Dated 8th April 2021, mentioned about the updated architectural drawings dated 10th March 2021 while the Master set plans are dated 13/4/2021. Geotechnical Engineer to be provided with latest drawings dated 13/04/201 to assess and update the Geotechnical Report (if required)</p> <p>13/09/2021:</p> <p>In the revised plans dated 10/8/2021, the front fence, and any works to the road reserve have been deleted.</p> <p>A letter from Ascent Geotechnical Consulting, ref AG 19104B – 09 August 202 is provided and as per the letter, the changes to the design do not require any material modifications to the recommendations presented in Table 3 of their original report (AG 19104, dated 1 July 2019).</p> <p>No objections are raised to the proposed modification. No modification to Development Engineering conditions required. Existing Development Engineering conditions for DA2020/0214 are considered to still be relevant and adequate.</p>
External Referral Body	Comments

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that "Decision Not Required". 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. A412802, dated 13 April 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

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 provided a response stating that "Decision Not Required". Therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.27m (RL 34.20)	10.37m (RL 34.30)	14.35% (1.22m)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

In *'Gann v Sutherland Shire Council [2008] NSWLEC 157'*, the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 4.55 was a "free-standing" provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the height of buildings development standard, without reference to SEPP 1 or Clause 4.6, relying instead on the "free-standing" power of Section 4.55.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provisions of the planning controls.

Whilst this modification application will result in a building height greater than that permitted by Clause 4.3 of the PLEP 2014, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the EP&A Act, which is a free-standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure has been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under the PLEP 2014 and the variation can be supported.

The modification application seeks a proposed building height of 10.37m (RL 34.30), which results in a 100mm increase to the height approved under Development Consent. DA2020/0214 (RL 34.20). The modified development results in an overall breach to the development standard by 1.22m (14.35%).

The change to the overall buildig height is largely resulting from the modification of the "linking" roof form between the vaulted roofs of the existing dwelling. The skillion roof form is proposed to increase the functional area (head heights/clearances), while also providing opportunities to increase access to sunlight to the internal areas and improving the outlook from the second floor. Whilst the bulk, scale and roof form of the modified structure is considered as acceptable, the resultant development is expected to reduce the extent of solar access to No. 16 Palm Beach Road. The requirement for a survey certificate (Condition 11) is to remain in place to ensure that at completion the roofing is in accordance with the modified plans. In this regard, Council can be satisfied that the modified development is substantially the same development as previously approved and therefore no assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	13.6m	1m - Existing (reconfigured entry to first floor)	No, but within existing building footprint
Rear building line	6.5m	10m	unaltered (deletion of swimming pool)	Yes
Side building line	2.5m	9m (North)	1.75m - Existing (study loft within existing roof void) 4.8m - Existing (terrace within existing structure - second floor)	No, but within existing building footprint
	1m	2.4m (South)	unaltered	Yes
Building	3.5m	Within Envelope (North)	unaltered	Yes

envelope	3.5m	Outside Envelope by 800mm to underside of eave, 3.2m to roof ridge (South)	Outside Envelope by 800mm to underside of eave (unchanged), 3.3m to roof ridge (South)	No
Landscaped area	60%	36%	43% (226.2m ²) (accounting for deletion of swimming pool)	No, but increase to overall landscaped area

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
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	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
B5.15 Stormwater	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
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
C1.23 Eaves	No	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	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	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 desired character of the Palm Beach Locality is for dwelling houses to be a maximum of two storeys in any one place. While the proposal will maintain the a two (2) storey presentation to the Palm Beach Road frontage, the modification may result in the dwelling appearing as three (3) storeys when viewed from the rear. It should be noted that the Ground Floor is partially below ground level (existing) and is largely not discernible when viewed from the road frontage or neighbouring properties. The second floor also appears to be contained within a roof form rather than by conventional side walls. For the avoidance of doubt, the proposal is considered to still achieve consistency with the 'Desired Character' and is supported on merit.

C1.4 Solar Access

The proposed skillion roof will result in overshadowing towards No. 16 Palm Beach Road, Palm Beach. It is however noted that the solar access diagrams submitted with the application demonstrate that a minimum of 3 hours of sunlight between 9am and 3pm on June 21st will be maintained to the main private open space area and the habitable room windows of No. 16 Palm Beach Road. In particular, areas such as central courtyard, swimming pool and rear garden areas will continue to achieve the minimum solar access as required under this clause.

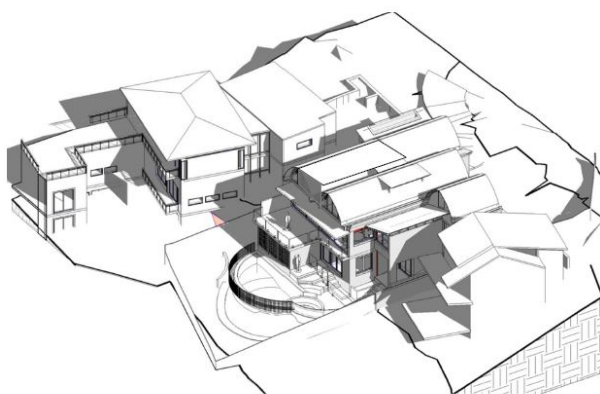


Figure 1. 3D elevation solar access diagram depicting the extent of shadowing by the modification in orange at 12pm on 21 June (Source: Nanna Lesiuk).

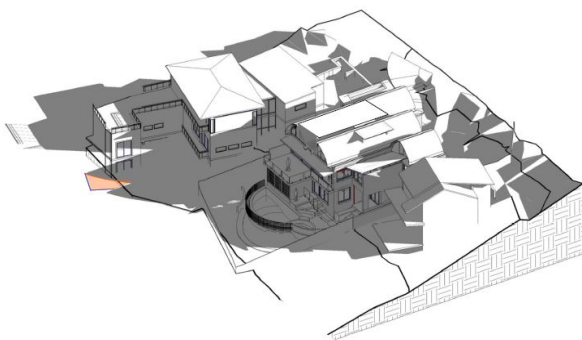


Figure 2. 3D elevation solar access diagram depicting the extent of shadowing by the modification in orange at 3pm on 21 June (Source: Nanna Lesiuk).

C1.23 Eaves

The modified skillion roof does not incorporate eaves of 450mm minimum width in all elevations. Despite this non-compliance, consideration has been given that the roof form will continue to reflect the coastal character of Palm Beach. The BASIX information submitted also demonstrates that appropriate solar access and shading will be achieved.

D12.5 Front building line

A portion of the proposed modified works technically fall within the 6.5m front setback. The works are within the front setback relate to the 'study loft' and minor changes such as the new entry archway on the First Floor. It should be noted however these changes are located entirely within the existing built form and therefore result in any further breach towards the front boundary. The proposed development is considered to comply with the outcomes of this clause and is supported on merit.

D12.6 Side and rear building line

As highlighted earlier in this report, the 'study loft' is located entirely within the roof void. Whilst the 'study loft' is setback 1.75m and therefore non-compliant with the 2.5m northern side setback requirement, consideration has been given that there will be no real discernable changes to this exterior when viewed No. 22 Palm Beach Road. The proposed modification is therefore considered to meet the outcomes of this clause and is supported on merit.

D12.8 Building envelope

The proposed skillion roof modification is not within the prescribed southern building envelope and is therefore non-compliant with the control requirement. Despite the control permitting roof eaves extending outside the building envelope, in acknowledgement that the roof area is for a habitable room. The proposed modification has been considered to breach the building by 3.3m (increase of 100mm from approved) when measured from the roof ridge. When measured from the underside of the eave along the southern elevation, the breach remains unchanged. While the non-compliance is applicable for approximately the eastern half of the dwelling house and is reduced to compliance at the front portion of the dwelling facing Palm Beach Road. The variation sought for the proposed development do not result in an unreasonable impact to neighbouring properties with regard to views, privacy and solar access. Furthermore, the proposal is seen to be consistent with the desire character of the locality. Visual impacts on the streetscape are limited when viewed from the Palm Beach Road frontage, due to the sloping topography of the site. The retention of canopy trees, palms and vegetation along the setback areas further limit the built form of the proposed development.

Based on the above, the variation to the control is supported on merit and considered to satisfy the

outcomes of the control.

D12.10 Landscaped Area - Environmentally Sensitive Land

The proposed modification results in an overall increase to the resultant landscaped area on site to 43% (226.2m²) from 36% as approved under Development Consent No. DA2020/0214. However it is noted that the modification seeks the deletion of the approved but yet to be constructed swimming pool reduce the extent of non-compliance. Whilst the approved swimming pool was technically indicated on the stamped plans for Development Consent No. DA2020/0214, the pool was in fact approved under a previous Development Consent No. DA2019/0827. For the avoidance of doubt, a condition has been recommended for the surrender of Development Consent No. DA2019/0827 under Section 4.63 of the Environmental Planning and Assessment Act 1979. The surrender of Development Consent No. DA2019/0827 will ensure that an acceptable level of landscaped area continues to be provided on site.

Subject to compliance with this condition, the variation to the control is supported on merit and considered to satisfy the outcomes of the control.

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. Mod2021/0221 for Modification of Development Consent DA2020/0214 granted for alterations and additions to a dwelling house on land at Lot A DP 342891,20 Palm Beach 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
MOD.06 (Proposed Site Plan)	10/8/21	Housed By Nanna Lesiuk
MOD.07 (Modified Ground Floor Plan)	10/8/21	Housed By Nanna Lesiuk
MOD.08 (Modified First Floor Plan)	10/8/21	Housed By Nanna Lesiuk
MOD.09 (Modified Second Floor Plan)	10/8/21	Housed By Nanna Lesiuk
MOD.12 (Modified Roof Plan)	10/8/21	Housed By Nanna Lesiuk
MOD. 13 (Modified West Elevations)	10/8/21	Housed By Nanna Lesiuk
MOD.14 (Modified East Elevations)	10/8/21	Housed By Nanna Lesiuk
MOD.15 (Modified North Elevations)	10/8/21	Housed By Nanna Lesiuk
MOD.16 (Modified South Elevations)	10/8/21	Housed By Nanna Lesiuk
MOD.17 (Modified Sections)	10/8/21	Housed By Nanna Lesiuk
MOD.24 (Modified Sections 2)	10/8/21	Housed By Nanna Lesiuk

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

BASIX Certificate, Ref. A412802	13 April 2021	GRS Building Reports
Geotechnical Review Letter, Ref. AG 19104B	9 August 2021	Ascent Geotechnical Consulting

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 8A 'Surrender of Development Consent No. DA2019/0827' to read as follows:

Prior to the issue of any Construction Certificate, Development Consent No. DA2019/0827 is to be surrendered to Council.

Reason: To ensure consistency with this consent including the deletion of the swimming pool.