



**REPORT TO ACCOMPANY AN APPLICATION UNDER SECTION
4.55(2) OF THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

Proposed changes to the approved development of the site for alterations and additions to a dwelling house.

The proposed changes relate to an amended roof form, internal layout changes and some other changes to the layout of the site.

Prepared for

Mr Paul Meehan

By

INGHAM PLANNING Pty Ltd
Suite 19, 303 Pacific Highway, Lindfield, 2070

Job No. 19123
April 2021

Urban and Regional Planning, Environmental Planning and Statutory Planning
PO Box 251 Artarmon NSW 1570
Telephone: (02) 9416 9111 Email: admin@inghamplanning.com.au
A.C.N 106 713 768
www.inghamplanning.com.au

Contents

- 1. INTRODUCTION**
- 2. DETAILS OF THE PROPOSED MODIFICATION**
- 3. CONSIDERATIONS REQUIRED UNDER SECTION 4.55(2)**
- 4. CONCLUSION**

1

Introduction

This report has been prepared to accompany an application under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 for the further modification of the Development Consent DA2020/0214 originally issued by the Northern Beaches Council on the 11 June 2020 for the following works:

"Alterations and additions to a dwelling house"

The development consent has not been subsequently modified.

On the 5 September 2019 a Development Application No. DA2019/0827 for alterations and additions to a dwelling house including swimming pool and spa was granted consent.

The subject modification application requests amendments to the approved plans primarily including:

- Additional floor space within existing roof void areas of the dwelling.
- New skillion roof to link the approved upper floor to the existing.
- Internal Layout changes within the dwelling.
- 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.

The bulk and scale of the building are largely retained by the modifications proposed however the height of the building will increase due to the new roof form which will link floorspace under a single roof form. These changes will not affect the views of neighbours due to the location of the roof form and height of the buildings on the higher side of Palm Beach Road. Council's assessment of the original proposal accepted that that the building height breach in respect to the new vaulted roof form would not give rise to an unacceptable impact on the amenity of adjoining or adjacent properties in terms of solar access, views, visual bulk or privacy. Given that the new roof form is largely within the approved building envelope, the small area of the skillion roof which extends above, is also not considered to give rise to any of the abovementioned issues.

This report will provide details of the proposed modification, as outlined in Section 2 of this report. The report also provides an assessment of the proposed modification pursuant to the considerations that apply under Section 4.55(2) of the Environmental Planning and Assessment Act, 1979.

2

Details of the Proposed Modification

The proposed modification of the approved development consent relates to the proposed changes as shown on the submitted plans prepared by Housed (Nanna Lesiuk) which include the following proposed changes. For ease, the proposed changes have been shown alongside the approved plans:

GROUND FLOOR

Approved and Proposed Ground Floor Plan (Refer to Plan MOD 07 Modified ground floor plan– extract below)

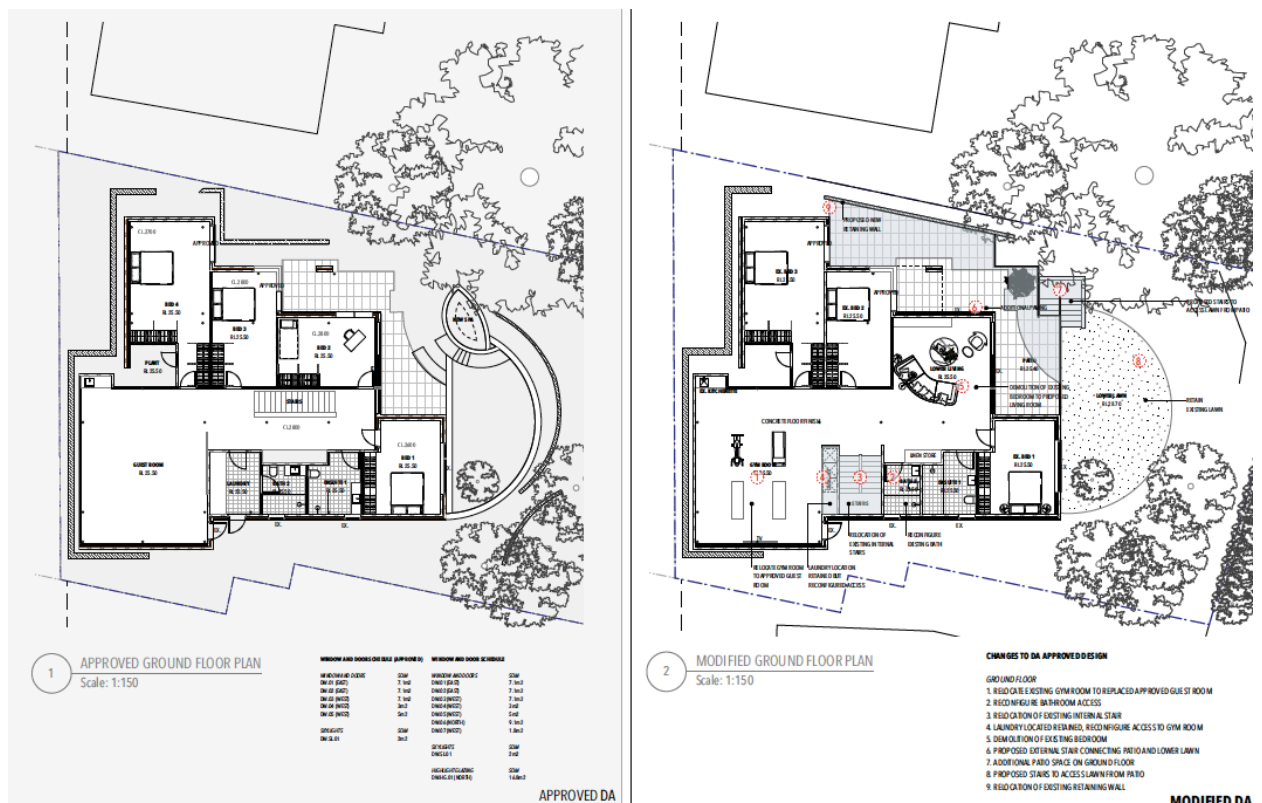


Figure 1: extract of Mod 07 prepared by Housed.

The following changes are proposed to this level of the building. The changes are shown shaded in blue and notated in red numbering.

Ground floor

1. Relocate existing gym room to replaced approved guest room
2. Reconfigure bathroom access
3. Relocation of existing internal stair
4. Laundry located retained, reconfigure access to gym room
5. Demolition of existing bedroom
6. Proposed external stair connecting patio and lower lawn
7. Additional patio space on ground floor
8. Proposed stairs to access lawn from patio
9. Relocation of existing retaining wall

FIRST FLOOR

Approved and Proposed First Floor (Refer to Plan MOD 08 Modified first floor plan– extract below)

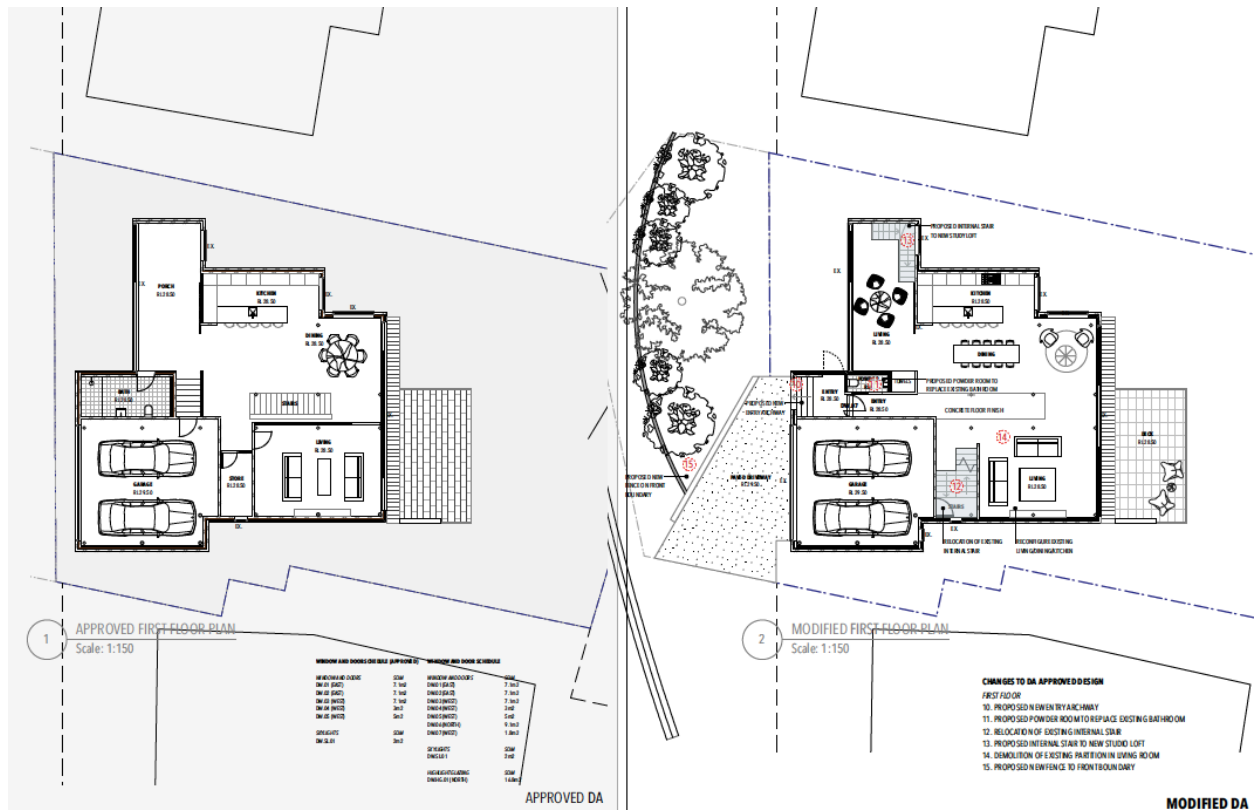


Figure 2: extract of Mod 08 prepared by Housed.

The modifications on this level are shaded in blue and notated in red numbering:

10. Proposed new entry archway
11. Proposed powder room to replace existing bathroom
12. Relocation of existing internal stair
13. Proposed internal stair to new studio loft
14. Demolition of existing partition in living room

The requested changes on the first floor level of the dwelling are mainly internal changes apart from the front entranceway which is not highly visible from outside the site. and the new formalise patio area, which is currently hard surfaced area at the front of the house. The changes proposed do not materially affect the presentation of the dwelling to its neighbours or to the public domain.

Approved and Proposed Second Floor (Refer to Plan MOD 09 Modified second floor plan– extract below)

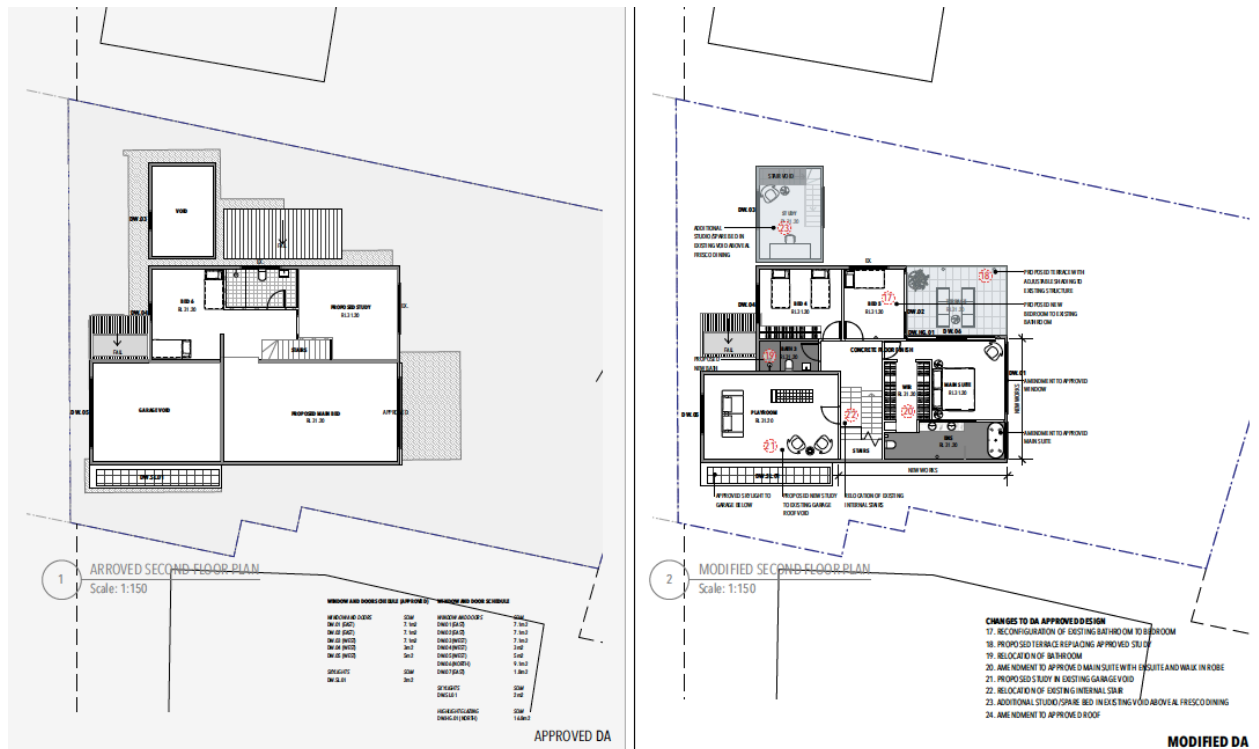


Figure 3: e extract of Mod 09 prepared by Housed.

The modifications on this level are shaded in blue and notated in red numbering:

17. Reconfiguration of existing bathroom to bedroom
18. Proposed terrace replacing approved study
19. Relocation of bathroom
20. Amendment to approved main suite with en suite and walk in robe
21. Proposed study in existing garage void
22. Relocation of existing internal stair
23. Additional studio/spare bed in existing void above al fresco dining

Areas outside the building envelope

As shown on the proposed ground floor plan and first floor plan, there are proposed changes at the front and rear of the building to paved areas and retaining walls. A landscape plan has been prepared which shows the landscape calculations. The pool and spa which were previously approved for this site have now been removed. This results in a proposal which moves closer to compliance at 59.5%.

Elevations

Front Elevation (To Palm Beach Road)

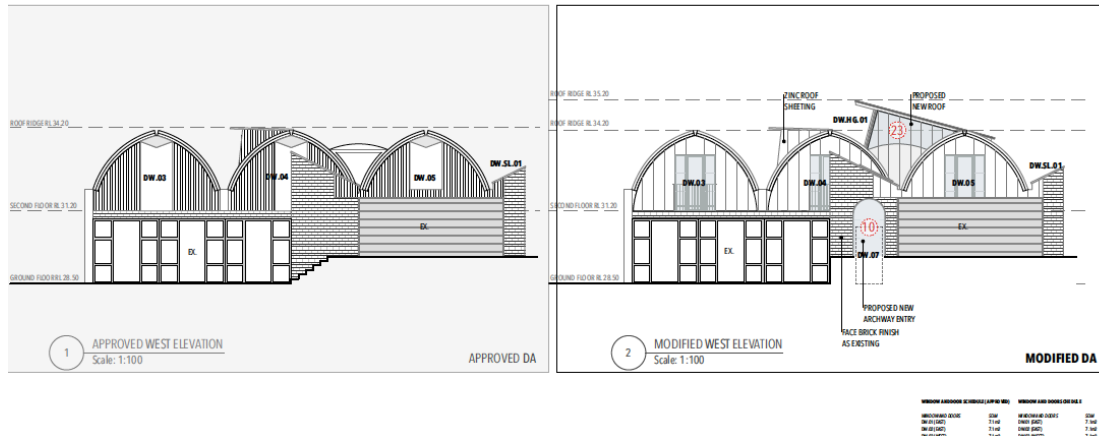


Figure 4: extract of Mod 13 prepared by Housed.

Rear Elevation

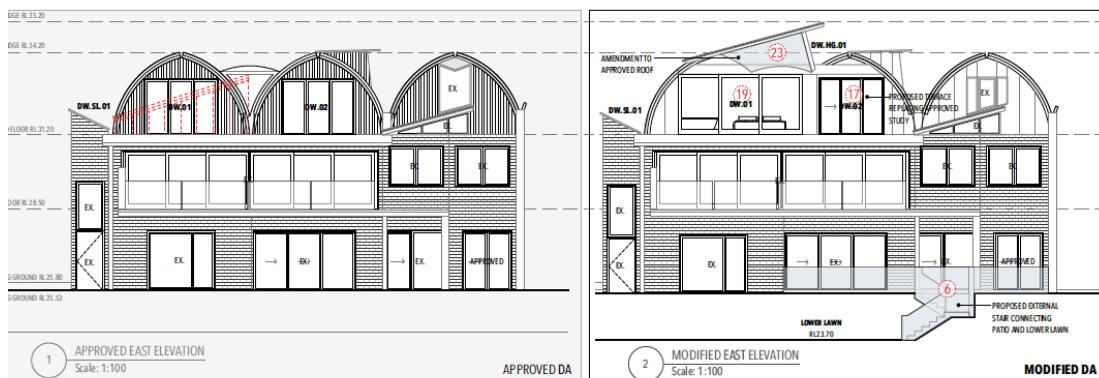


Figure 5: extract of Mod 14 prepared by Housed.

The proposed additional roof form is shown shaded blue above and is to allow a connection between the roof void over the garage (to be floor area) and the remainder of the floorspace on this level. The majority of the roof connection is under the height already existing between the two vaulted roof forms. A small section of the top of the skillion rises above the upper most points of the vaulted roof forms and reflects the angle adopted on other parts of the roof. The design of the new roof allows light to enter the dwelling while also being of materials which correspond with the existing roof. The materials which will be used in the new section of roof are compatible with the remainder of the roof and the form is also compatible with the style of the roof. Other proposed changes to the facades are minor.

Summary of the proposed changes to the approved plans

This proposal to modify the approved DA proposes changes to the approved dwelling, due to the refinement of the design.

While the proposed changes do involve a change to the overall height of the dwelling, the number of storeys and the bulk and scale of the building will largely stay as

INGHAM PLANNING PTY LTD

approved. The proposal to modify the plans will result in new floorspace within existing void areas of the roof space of the approved dwelling which does not alter the bulk of the building and there will be some area of previously approved floor area converted to terrace area. Landscaped area will be modified by the deletion of the spa and pool on the eastern side of the dwelling and the retention of lawn area in this part of the site.

No concurrent approvals are sought under the Local Government Act 1993.

3.1 The relevant subsections of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 are detailed below:

"(2) Other modifications

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 to which the consent as modified relates is substantially the same development for which consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent 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*
- (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 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.*

Subsections (1) and (1A) do not apply to such a modification."

"(3) In determining an application for modification of a consent under this section, 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 considerations the reasons given by the consent authority for the grant of the consent that is sought to be modified."

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as is modified.

With respect to sub-clause (2)(a), the proposed development, as modified is substantially the same development, as originally approved by Council, as detailed in Section 3.2 of this town planning report.

With respect to sub-clause (2)(b), as there are no concurrence requirements in relation to the subject development application, the provisions of sub-clause 2(b) are not applicable.

With respect to sub-clauses (2)(c) and 2(d), the modification will be notified in accordance with sub-clause (2)(c) and should any submissions be received, they will be appropriately considered by Council, in accordance with sub-clause (2)(d).

With respect to sub-clause (3), assessment of the modification in relation to Section 4.15(1) is addressed in Section 3.4 of this town planning report.

3.2 The development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted.

Development consent was originally granted for the following:

"Alterations and additions to a dwelling house"

The proposed modification does not change the essential features of the development as approved. The proposed modification does not significantly alter the development for which the development consent was granted and will not alter the approved description of the development.

The limited extent of change to the building, as originally approved, is evidenced by no change to the approved footprint of the dwelling height, no change to the number of storeys or decrease in landscaped area. The proposed roof form is within the centre of the building and as such does not alter the shadows cast upon the surrounding sites.

The Land and Environment Court in several appeals, has given consideration as to what constitutes substantially the same development pursuant to Section 4.55.

The Land and Environment Court has adopted the position that changes are permitted provided that "the modified development is essentially or materially the same as the currently approved development." The Court of Appeal has adopted the test that the changes proposed should meet the test of "alteration without radical transformation." This test has since been consistently applied by the Courts.

The development, as modified, is essentially or materially the same as the currently approved development and the proposed modification could certainly not be described as a radical transformation.

In our opinion the development as modified, is substantially the same development for which development consent was originally granted under Development Consent DA 2020/0214 as approved by the DDP and issued by Council on the 11 June 2020.

3.3 Notification and the consideration of submissions

This matter must be determined by Council. At the close of notification, the applicant will review any submissions which are lodged in relation to this application.

3.4 Consideration of such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application

The modification results in no material change to the extent of compliance with development controls and objectives.

As noted in Section 3.2, the development as modified is substantially the same development as originally approved by Council in June 2020 and the proposed modifications to the approved plans have no significant implications for the environment. The matters referred to in Section 4.15(1) of the Environmental Planning and Assessment Act, 1979 are addressed below.

3.5 4.15 (1) Evaluation

In accordance with the requirements of Section 4.55(2) the following Section 4.15(1) matters are of relevance.

3.5.1 Environmental Planning & Assessment Act, 1979

Section 5 of the EP&A Act, 1979 states that the Act is to encourage

'(ii) the promotion and co-ordination of the orderly and economic use and development of land,'

The proposed minor changes will allow for small changes to the approved development to suit the needs of the owner as the design is refined, which will have no detrimental effect upon any surrounding resident. The proposal therefore promotes the stated aim.

3.5.2 a)(i) environmental planning instruments

State Environmental Planning Policy No. 55 – Remediation of Land SEPP 55

Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated. Given the history of residential use of the land, the site is suitable for the proposed works.

State Environmental Planning Policy (BASIX) 2004

A BASIX certificate is provided as part of the application.

SEPP Infrastructure (2007)

Council must consider clause 45 of the SEPP Infrastructure prior to determination and notify Ausgrid accordingly. The original proposal was referred to Ausgrid. No response had been received within the 21 day statutory period and therefore, it was assumed that no objections were raised and no conditions were imposed by Council.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The SEPP commenced on 25 August 2017 and replaced Clause 5.9 of Pittwater Local Environmental Plan 2014. The aims of the SEPP are detailed in Clause 3 and note: The aims of this Policy are: (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. In this instance, the proposal will not see any loss of any substantial vegetation and is therefore considered to be consistent with the aims of the SEPP.

State Environmental Planning Policy (Coastal Management) 2018

The site is not subject to State Environmental Planning Policy (Coastal Management) 2018 (SEPP Coastal Management).

Pittwater Local Environmental Plan 2014

The proposed development is permissible in the E4 zone. The proposal complies with the aims of the LEP2014 and the specific objectives of the E4 zone. In addition to the zoning discussed above the following clauses of the LEP are relevant to this application.

Clause 4.3 Height of Buildings – The maximum height of a building on the site is 8.5 metres. The apex of the proposed roof form will exceed the maximum height at a height of 11.27 metres. A clause 4.6 variation to the height standard had been prepared with the original application and is found at Appendix A. As Council is aware, a further clause 4.6 variation is not required under a modification application and must be assessed on merit.

Council had previously assessed that the proposed roof at 10.27 metres high was acceptable in regard to the protection of views from properties on the high side of Palm Beach Road and was also acceptable in terms of materials and detailing and had an acceptable shadow impact. When compared with the perspective submitted with the original application, the location of the proposed connecting roof form is towards the centre of the building and would not significantly change the shadows cast upon the neighbouring properties. A shadow diagram forms part of the proposal and is contained within the architectural set of plans. The revised shadow diagram shows a very minor increase in the shadow.

In terms of views, it appears that the new roof form would sit within the view line and inhibit views towards other roof forms rather than of the foreshore or water.

Clause 7.1 Acid Sulfate Soils – the site is identified as containing Class 5 acid sulfate soils. Only very minor excavation is proposed to accommodate the proposal and this relates only to retaining walls and paved areas.

Clause 7.2 Earthworks – No earthworks, other than minor works to facilitate retaining walls, are required.

Clause 7.7 -Geotechnical Hazards – The site is identified on the Geotechnical Hazard Map as Geotechnical Hazard H1. There are no new ground works involved. Other than minor works for retaining walls A geotechnical assessment was carried out as part of the approved DA in 2019 for the small pool and spa and found that the site is suitable for the development. A copy of that report formed part of the DA to Council.

3.5.3 Draft environmental planning instruments

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.

3.5.4 a)(iii) any development control plan

Pittwater 21 DCP

The relevant provisions of this DCP were fully considered in the original application. Council found that the only parts of the DCP which the proposal didn't comply with were building envelope and landscaped area controls. The main Built Form Controls for development are outlined below:

Built Form Control	Requirement	Proposed	Complies
Front building line	6.5m	No change proposed	N/A
Rear building line	6.5m	No change proposed	N/A
Side building line	2.5m/1m	No change proposed	N/A
Building Envelope	3.5m/45 deg	Modified roof form	Minor encroachment
Landscaped Area	60%	Improvement	Moves closer to compliance at 59.5%

Northern Beaches Section 7.12 Contributions Plan 2019

As the cost of the development is greater than the threshold of \$100,001, the proposal is subject to a contribution. Council must make an assessment of this condition and if any amendment is required.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality

The proposed amendments to the refinement of the design do not have any significant environmental impact, nor is there likely to be any adverse social or economic impacts because of this proposal. Council previously considered that the approved development did not have a detrimental social or economic impact in the locality considering the character of the proposal and the nature of the existing and proposed land use.

The suitability of the site for the development

The site is suitable for the proposed use and its ongoing suitability for such use is not reduced because of the requested modest modification to the development consent.

Submissions made in accordance with the Act or its regulations

The proposed modification will not impact adversely on neighbour amenity or adjoining properties. The assessment of submissions should any be received by Council is a matter for Council to consider.

The public interest

INGHAM PLANNING PTY LTD

There are no matters of the public interest that would be adversely affected by approval of the development, as modified.

The proposed modification will not adversely impact on the character or amenity of the locality and will result in an enhanced environment.

The public interest is served by the lodgement of this application for extremely minor alterations to the dwelling.

4

Conclusion

The proposed modification involves changes to the approved development under the original DA Consent DA2020/0214 originally issued by the Northern Beaches Council on the 11 June 2020

The impact of the proposed modified development on the surrounding natural and built environment will be minimal.

We support the applicant's application for the modification of the approved development and request that Council modify the consent as requested.