

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0867
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<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot D DP 313630, 1127 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2020/1732 granted for Demolition works and construction of a dwelling house including swimming pool
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	John Emery Kennedy Roslyn Anne Kennedy
<b>Applicant:</b>	Tregale & Associates Pty Ltd

<b>Application Lodged:</b>	05/11/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 4.55(1A) of the EP&A Act 1979 and proposes to modify the existing development consent, DA2020/1732, for a dwelling house, swimming pool, garage / cabana and seawall.

In detail, the proposed modification consists of the following:

- reduction in the area of the approved basement level, by 62m<sup>2</sup>; and
- deletion of the stair access from the pool cabana to the revised basement; and
- relocation of the pool pump/equipment room to within the existing approved cabana.

The application was not notified, as per the requirements of the Northern Beaches Community Participation Plan. Refer to further discussion in the Notification and Submissions section of this report.

## 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 21 Development Control Plan - C1.6 Acoustic Privacy

## SITE DESCRIPTION

<b>Property Description:</b>	Lot D DP 313630 , 1127 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The site is trapezoidal in shape, with a 11.495m wide frontage to Barrenjoey Road, a 56.39m maximum depth and a total area of 624m<sup>2</sup>. The site adjoins the Pittwater Waterway at the MHWL at the rear, with direct pedestrian access to the sandy foreshore. With the exception of the small portion of the site below the seawall, which drops down to RL 1.49m AHD, the site is generally level with spot levels ranging from RL 3.1m AHD at the front of the site and RL2.37m AHD at the rear. An existing dwelling is located centrally on the site. A portion of the rear of the dwelling has been excavated into the site and sits approximately 1m below natural ground level. Vehicular access is gained via Barrenjoey Road, with pedestrian access to both Barrenjoey Road and to the waterway.</p> <p>The site is located within the Palm Beach and Whale Beach Locality, and is surrounded by low density residential development.</p>

Map:



## SITE HISTORY

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

DA2020/1732: Development consent granted for "Demolition works and construction of a dwelling house including swimming pool" on 22 March 2021. This consent is the subject of the proposed modification.

## 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 DA2020/1732, 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><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>the modifications relate to a reduction in the area of the approved basement; and</li> <li>the changes to the internal aspects of the ground floor (cabana) are very minor; and</li> <li>there will be no external changes to the approved dwelling.</li> </ul>
(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 DA2020/1732 for the following reasons:</p> <ul style="list-style-type: none"> <li>there will be no change to the exterior aspects of the approved dwelling and pool; and</li> <li>the modifications to the basement are to reduce its total area.</li> </ul>
(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 was not publicly exhibited, based on the very minor aspects of the proposed modification, consistent with the exemptions outlined in the Northern Beaches Community Participation Plan. As such the Regulations have been met in this regard.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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>



Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 98</u> of the EP&amp;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&amp;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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 proposed modification makes no change to the exterior or footprint of the existing dwelling. Hence, the recommendations of the bushfire certificate for the original approval are considered valid and require no further review or modification.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2020/1732 for demolition and construction of a new

Internal Referral Body	Comments
	<p>dwelling house and swimming pool.</p> <p>The modification proposal includes: a reduction in the extent of approved excavation; and a minor refinement to the internal layout of the cabana. The proposed modification does not impact upon the landscape outcome of development consent DA2020/1732 and there are no existing retained trees impacted, and this is confirmed by the submission of a arborist statement in review of the modification proposal.</p>
NECC (Bushland and Biodiversity)	Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2020/1732).
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Coastal Management) 2018 (clauses 13, 14 &amp; 15); and</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies. It is assumed works will be undertaken as per the conditions of the original DA2020/1732.</p> <p>The application is supported without further conditions.</p>
NECC (Development Engineering)	<p>The proposed modifications to the development do not alter the original assessment of the application by Development Engineering. The letter by the Geotechnical Engineer addresses the modifications with no alteration to the original report.</p> <p>Development Engineering support the proposal with no additional or modified conditions of consent recommended.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed modifications are not considered to increase flood risk. No flood related objections.
Parks, reserves, beaches, foreshore	<p>The application is for modification to development consent DA2020/1732 for demolition and construction of a new dwelling house and swimming pool.</p> <p>The modification proposal includes: a reduction in the extent of approved excavation; and a minor refinement to the internal layout of the cabana. The proposed modification does not impact upon the adjoining Pittwater foreshore.</p>

## 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 (Coastal Management) 2018**

The site is identified as being within the Coastal Environmental Area and Coastal Use Area under the provisions of State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the

proposed modification, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1)(a) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1)(a) of the CM SEPP,
- the surrounding coastal and built environment and the bulk, scale and size of the proposed development has been considered, and
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

### **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	8.4m	No change	N/A	Yes
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#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.8 Limited development on foreshore area	Yes

### **Pittwater 21 Development Control Plan**

#### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10m	10m	unaltered	N/A
Rear building line	N/A (foreshore building line)	Behind FBL	unaltered	N/A
Side building line	2.5m (north)	1.5m	unaltered	N/A
	1m (south)	1m	unaltered	N/A
Building envelope	3.5m (north)	Within envelope	unaltered	N/A
	3.5m (south)	Outside envelope	unaltered	N/A
Landscaped area	50%	49%	unaltered	N/A

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.14 Scenic Protection Category One Areas	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

## Detailed Assessment

### **C1.6 Acoustic Privacy**

A review of the original consent reveals that no condition was applied to regulate the level of noise generated by the pool equipment for the life of the development. The proposed modification will relocate this equipment from the basement to within the cabana that adjoins the swimming pool.

In terms of general siting, this re-location is unlikely to cause any adverse impact, as:

- the pump equipment will be enclosed within a solid masonry room;
- the room itself is at least 5m from the nearest property boundary; and
- is not in close proximity to any sensitive rooms / floor space of adjoining dwellings.

Notwithstanding, an additional condition of consent is recommended, to regulate any further acoustic impact that may result from the relocated equipment.

### **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. Mod2021/0867 for Modification of Development Consent DA2020/1732 granted for Demolition works and construction of a dwelling house including swimming pool on land at Lot D DP 313630, 1127 Barrenjoey 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
DA02 Revision A	21 October 2021	Tregale & Associates
DA03 Revision A	21 October 2021	Tregale & Associates
DA11 Revision A	21 October 2021	Tregale & Associates
DA12 Revision A	21 October 2021	Tregale & Associates
DA15 Revision A	21 October 2021	Tregale & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
Geotechnical Risk Assessment	20 October 2021	Geo-Logix
Arborist Report - Review of Amended Plans	14 October 2021	Hugh The Arborist

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 No.50 Swimming Pool/Spa Motor Noise to read as follows:**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

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

**Signed**



**Nick England, Planner**

The application is determined on 29/11/2021, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**