

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0471
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 7 DP 21934, 12 Goodwin Road NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent DA2020/0227 granted for Construction of a swimming pool and associated works
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Anthony Robert May
Applicant:	Anthony Robert May

Application Lodged:	28/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/10/2020 to 19/10/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Application No DA2020/0227 by deleting Condition 10 of the approved consent. The condition is as follows:

Condition 10 - Use of Right of Way for Construction Vehicles

No construction or trade vehicles / machinery greater than 3 tonnes in weight are to use the Right of Way at any point during the demolition or construction of the development.

Reason: Protection of property.

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 - B8.6 Construction and Demolition - Traffic Management Plan
 Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
 Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 7 DP 21934 , 12 Goodwin Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Goodwin Road.</p> <p>The site is regular in shape with a frontage of 18.29m along Goodwin Road and a depth of 39.73m. The site has a surveyed area of 720.8m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey weatherboard dwelling house located centrally, with a detached single garage carport located within the rear yard. Vehicular access is obtained by a right of carriage way to the rear of the property which provides access off Wallumata Road.</p> <p>The site has a fall of approximately 11.5m from the western (rear) to the eastern (front) boundary.</p> <p>The site multiple canopy trees within the front yard with the rear yard predominately consisting of shrubs and turf.</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:

- **DA2020/0227** (subject of this application) - Development Application for the construction of a swimming pool and associated works was approved on 21/05/2020

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 DA2020/0227, 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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	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 DA2020/0227
(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, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control 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 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

Section 4.15 'Matters for Consideration'	Comments
	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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a Construction Traffic Management Plan.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater</p>

Section 4.15 'Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	<p>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 05/10/2020 to 19/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Angela Louise Foley	Po Box 126 MONA VALE NSW 1660

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

- Concern with use of Right of Way for construction due to potential access and damage.**
Comment:
 This matter has been discussed in detail under Section *B8.6 Construction and Demolition - Traffic Management Plan*. In summary, appropriate conditions have been imposed to ensure minimisation and rectification of any damage to the right of way and that appropriate access on the right of way is maintained. Such conditions include the adherence to the submitted Construction Traffic Management Plan, maintenance of access for the right of way and the preparation of a dilapidation report for the Right of Way in order to record and rectify and damage associated with the works.

- **Access will not be granted onto the Right of Way**

Comment:

The property is subject to a Right of Carriageway Easement. The terms of this easement are to be adhered to. This consent does not override any legal agreement associated with the Right of Carriageway Easement.

- **Damage to Right of Ways should be tracked during construction**

Comment:

A condition of consent is recommended for the preparation of a dilapidation report for the Right of Way in order to record and rectify any damage associated with the proposed works.

REFERRALS

No referrals were sent in relation to this application

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 (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. No response has been received within the 21 day statutory period and 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	2.5m	No Change	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	No Change	unaltered	Yes
Rear building line	6.5m	1.1m	unaltered	No
Side building line	2.5m	6.2m	unaltered	Yes
	1m	0.3m	unaltered	No

Building envelope	3.5m	Within envelope	unaltered	Yes
	3.5m	Within envelope	unaltered	Yes
Landscaped area	60%	40.6%	unaltered	Yes

*Note - the application does not seek any changes to the proposed built works

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	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
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.15 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B8.6 Construction and Demolition - Traffic Management Plan

The proposed modification seeks to remove a condition imposed by Council restricting construction or trade vehicles / machinery greater than 3 tonnes in weight from using the Right of Way at any point during the demolition or construction of the development. Supporting evidence had been provided by the contracting company detailing the need to remove this condition in order to facilitate construction of the development in an appropriate manner. As part of the application, the applicant has provided a Construction Traffic Management Plan (prepared by Achievable Contracting dated 27/10/2020).

This Construction Traffic Management Plan has detailed the following reasons and measures in order to reduce impacts of construction on the owners and uses of the right of carriageway:

- The removal of the condition would substantially reduce the number of loads and transportation trips that are associated with the development
- A spotter will be used to ensure safety for the public, from the time the tipper truck presents at Wallamutta Road, during all movements and until the vehicle has left the ROW exiting Wallamutta Road.
- The notification of residents prior to the use of the right of way
- Machinery will cease actions when pedestrians are present however, a safe right of passage will always be kept whilst work proceeds.

Furthermore, the two neighbours to the north of the subject site (No.14 and No.16 Goodwin Road) who are reliant on the area of the Right of Way which adjoins No.12 Goodwin Road for access, have submitted letters of support for the application subject to compliance with the Construction Traffic Management Plan.

If approved, this consent will maintain the following conditions to protect the condition and usability of the Right of Way:

- Damage to Right of Way - Any damage to the right of way, caused by the construction of the development, is to be repaired prior to the issue of the occupation certificate.
- Right of Way Access - Access for the right of way is to be reasonably maintained at all times.

Furthermore, if approved, additional conditions are to be imposed which:

- Ensure that the applicant provides neighbours who use the right of way with contact details of the contractor in the event that access to the right of way is blocked.
- Ensure the terms of the submitted Construction Traffic Management Plan are adhered to.

- Expands the dilapidation report to include the entirety of the Right of Way in order to record and rectify and damage associated with the works

It should be noted that this consent does not override any legal agreement associated with the Right of Carriageway Easement.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

The proposal does not seek to alter the side and rear building line approved within DA2020/0227. No change to approved built form is proposed.

D10.13 Landscaped Area - Environmentally Sensitive Land

The proposal does not seek to alter the landscaped area approved within DA2020/0227. No change to approved built form is proposed.

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 2019

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. Mod2020/0471 for Modification of Development Consent DA2020/0227 granted for Construction of a swimming pool and associated works on land at Lot 7 DP 21934,12 Goodwin Road, NEWPORT, 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

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Construction Traffic Management Plan	27/10/2020	Achievable Contracting

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

B. Delete Condition No.10 Use of Right of Way for Construction Vehicles which read as follows:

No construction or trade vehicles / machinery greater than 3 tonnes in weight are to use the Right of Way at any point during the demolition or construction of the development.

Reason: Protection of property.

C. Modify Condition No.11 - Right of Way Access to read as follows:

Access for the right of way is to be reasonably maintained at all times. The applicant must provide neighbours who use the right of way with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To minimise impacts to nearby properties and residents.

D. Add Condition No.8A - Pre-Construction Dilapidation Report of Right of Way of to read as follows:

A dilapidation report must be prepared for the entire right of carriageway in which construction access is proposed. The report must be sufficiently detailed to determine the state of the right of carriageway prior to construction, in order to identify any damage caused by the construction of the development.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

E. Add Condition No.24 - Maintenance of Easement Provisions of to read as follows:

This consent does not override any legal agreement or provisions associated with the Right of Carriageway Easement associated with the subject site.

Reason: To ensure compliance with the imposed legal agreements

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

Signed



Gareth David, Planner

The application is determined on 06/11/2020, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager