

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0790
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<b>Responsible Officer:</b>	Julie Edwards
<b>Land to be developed (Address):</b>	Lot 481 DP 233572, 10 Nooal Street NEWPORT NSW 2106
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1497 for Alterations and additions to a dwelling house
<b>Zoning:</b>	C4 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>	No
<b>Owner:</b>	Kevin Godfrey Stephanie Yasmin Thasler
<b>Applicant:</b>	Matt Thitchener

<b>Application Lodged:</b>	18/10/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	02/11/2021 to 16/11/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: %
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify DA2019/1947 which was granted for alterations and additions to a dwelling house in the following manner:

#### Lower Ground Floor

- Relocate internal stair.
- Delete internal walls.
- Rectify external retaining walls.
- Extend concrete floor.
- Inclusion of kitchenette,
- Lower the floor level from RL 4140 RL to RL 3800.

### Ground Floor

- Delete garage wall and widen garage to make garage more compliant with DCP.
- Relocate entry to allow garage modification.
- Relocate internal stair.
- Adjust wet areas and guest room sizes.
- Replace awning with operable solar control.
- Modify kitchen.
- Delete approve column near entry
- Provision of operable shading
- Thicken the wall to the east elevation
- Addition of some paving to rear landscaped area.
- Balcony\deck off living area increased in size by 0.2m towards the south
- Window – WGW1 – reduced in size,
- Removal of pergola roof.

### First Floor

- Enlarge approved window W1N1
- Reconfigure bedroom 2.
- Reconfigure window to Bedroom 4.
- Relocate window to Bedroom 3.
- Reconfigure bathroom, WC and walk in robe to bedroom 1.
- Reduction of brick chimney overrun.
- Increase north facing glazing to entry stair.
- Provision of a new flue.
- Reduce height of fireplace overrun.
- Provision of operable shading
- Terrace located off Bed 4 increased in size,
- Removal of ground floor skylights,
- South East elevation windows:
- Change in size of W1S2,
- Addition of W1S1.

### Roof

- Modify roof form and remove skillion roof over hall and replace with a smaller roof
- Windows to south elevation of skillion roof
- Remove fireplace extension at upper level.
- Delete approved skylight.

### External Landscaping

- Changes to stairs along northern side of lower ground floor,
- South East elevation new fence or extension to fence,
- North elevation removal of fence on terrace,
- Rear yard – change to stairs and removal of terracing. Levelling out of rear yard, increasing in height.

## 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 - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 481 DP 233572 , 10 Nooal Street NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Nooal Street.</p> <p>The site is regular in shape with a frontage of 20.11m along Nooal Street and a depth of 43.28m. The site has a surveyed area of 870.3m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a dwelling house, swimming pool and detached car port.</p> <p>The site has a westerly aspect with a slope falling down from the frontage to the rear boundary.</p> <p>An easement for a right of carriageway benefitting No.10A Nooal is located on the northern boundary of the site.</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p>

## Site Inspection

A site inspection was conducted 25 November 2021.

Map:



## SITE HISTORY

Development application DA2019/1497 was approved for alterations and additions to a dwelling house on 25 February 2020.

Development application DA2021/0323 was approved for demolition works and construction of a swimming pool and cabana on 13 May 2021.

## APPLICATION HISTORY

A review of the application, as originally submitted, identified a number of items which were indicated on the plans but not included in the Statement of Modification. This discrepancy was conveyed to the applicant via email on 3 December 2021.

The identified discrepancies were:

### **Works within Easement and Right of Carriageway**

*The proposed modification includes works within the Right of Carriageway and easement that run along the northern boundary of the site. These works include the bin store, stairs and landscaping works.*

*As no works (beyond minor repairs of the existing retaining wall) are to take place within the Easement for Services and/or the Right of Carriageway you are requested to amend the submitted plans to remove all encroachments within the Easement for Services and/or Right of Carriageway.*

### **Modification of the Cabana**

*The works to the swimming pool and Cabana were approved under a separate development application DA2021/0323 and cannot be assessed as part of a modification to DA2019/1497. A separate application will need to be submitted for these works to modify DA2021/0323. Please provide amended*

plans removing any works associated with DA2021/0323.

### **List of modified works**

During the assessment of the application it was noted that there are multiple changes to the plans from those approved, that have not been highlighted on the plans or listed in the Statement of Modification. Below is a list of changes which are needed to be included to enable an accurate assessment and determination:

#### Lower Ground Floor:

- Inclusion of kitchenette,
- Change to the FFL from RL 4140 RL to RL 3800.

#### Ground Floor:

- Balcony\deck off living area increased in size (by 200mm)
- Window – WGW1 – reduced in size,
- Removal of pergola roof.

#### First floor:

- Terrace located off Bed 4 increased in size,
- Removal of ground floor skylights,
- South East elevation windows:
  - Change in size of W1S2,
  - Addition of W1S1.

#### Roof:

- The roof height appears to have changed (i.e. lower) but the plans do not indicate the RL to confirm the degree of change.

#### External:

- Landscaping:
  - Changes to stairs along northern side of lower ground floor,
  - South East elevation new fence or extension to fence,
  - North elevation removal of fence on terrace,
  - Rear yard – change to stairs and removal of terracing. Levelling out of rear yard, increasing in height.

Subsequent to that email an amended Statement and plans were submitted to correct the discrepancies. The amendments were minor and did not warrant the re-notification of the application.

### **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 DA2019/1497, 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>• Compliance with major applicable development standards and controls (e.g. setbacks, etc.) will remain generally consistent with the original consent.</li> <li>• The proposal will not affect the findings and recommendations of previously approved consultant reports.</li> <li>• The external appearance of the development will be largely unchanged by the proposed modifications.</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 DA2019/1497 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modification is consistent with the approved alterations and additions to the existing dwelling,</li> <li>• The modification does not alter the low density residential land use of the site,</li> <li>• The expected outcomes of the original assessment are maintained under the modification.</li> </ul>
(c) it has notified the application in	The application has been publicly exhibited in

Section 4.55(1A) - Other Modifications	Comments
<p>accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

#### 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	<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

Section 4.15 'Matters for Consideration'	Comments
(EP&A Regulation 2000)	<p>the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amending the SEE to include all of the proposed modifications, amending plans to remove all works from the Easement and ROW and removing works to the cabana that can not be assessed as part of this application.</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>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> <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>
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	No submissions were received in response to the public exhibition of this application.
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 02/11/2021 to 16/11/2021 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 of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	The fireplace was approved in previous DA "Stamped Plans", proposal to reduce the extension of the flue will still comply with AS 2918 as the flue opening is above the roof line. Proposal supported.
NECC (Development Engineering)	No objections to approval

## 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. of this report.

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A426830 dated 23

September 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. 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.

## **SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this clause applies*

*unless the consent authority is satisfied that:*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

This clause has been assessed against the subject site and the proposed development. No issues have been raised in relation to the proposed development and the land being within the coastal environment area.

#### **14 Development on land within the coastal use area**

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
  - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
  - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
  - (iv) Aboriginal cultural heritage, practices and places,
  - (v) cultural and built environment heritage, and
- (b) is satisfied that:
  - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

This clause has been assessed against the subject site and the proposed development. No issues have been raised in relation to the proposed development and the land being within the coastal environment area.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

#### **15 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development is contained wholly within the subject site and is considered to be minor alterations and additions to an existing dwelling house. The works are not likely to cause any increased risk of coastal hazards on that land or other land.

## 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
4.3 - Height of Buildings	8.5m	9.2m	9.1m	7.05%	No

**Note:** The change involves a re-orientated skillion pop up and there are no additional roof height non-compliances beyond that already approved (see the table above).

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

### Detailed Assessment

#### 4.3 Height of buildings

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.1m
Percentage variation to requirement:	7.05%

##### Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorizes 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 in order to determine the modification application.

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. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the E4 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

Compliance with the height of buildings development standard is considered unnecessary in this case for the following reasons:

- The proposed modification changes the design of the roof form from a double skillion roof to a single skillion roof,
- The proposed new roof form is reduced in height from the approved.
- The non-compliance will result in no unreasonable amenity impacts.

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The height of the proposed roof is lower than that of the original approved roof,
- The extent of the non-compliance is very minor and relates to the rear elevation of the works which are not visually prominent from the street frontage;

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

4.3 Height of buildings

(1) The objectives of this clause are as follows—

***a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,***

Comment:

The proposed development is generally consistent with the approved dwelling and maintains the desired character of the locality.

***b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,***

Comment:

The proposed modification results in a reduction to the height and scale of the approved development.

***c) to minimise any overshadowing of neighbouring properties,***

Comment:

The modified roof form will not result in unreasonable overshadowing of the adjoining properties.

***d) to allow for the reasonable sharing of views,***

Comment:

The modified roof form will not result in any unreasonable view impacts.

***e) to encourage buildings that are designed to respond sensitively to the natural topography,***

Comment:

The modification is within the building footprint and responds sensitively to the natural topography.

***f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,***

Comment:

The site is in close proximity to the Pittwater foreshore, however in the context of similar surrounding development, will not result in any adverse visual impact when viewed from these areas.

#### Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

The site is completely developed, with no remaining areas of natural habitat. Hence, the development comply with this objective.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment:

The proposed works are generally minor and will not have an adverse impact on the above values.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:

The development is of an appropriate scale and density, and the changes to the roof respond to the landform and landscape.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment:

The proposed modifications will not unreasonably impact riparian and foreshore vegetation or wildlife corridors.



**Conclusion:**

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

**Comment:**

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	10.1m	unaltered	Yes
Rear building line	6.5m	13.6m	12.2m	Yes
Side building line	North - 2.5m	3m / 4.5m	unaltered	Yes
	South - 1m	1.2m / 3m	unaltered	Yes
Building envelope	3.5m	Within envelope	unaltered	Yes
	3.5m	Within envelope	unaltered	Yes
Landscaped area	50%	399m <sup>2</sup> - 46%	34% (302.3m <sup>2</sup> ) with 6% variation - 40.73% (354.51m <sup>2</sup> )	No No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.23 Eaves	Yes	Yes
D9.17 Scenic Protection Category One Areas	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)	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

## Detailed Assessment

### **C1.5 Visual Privacy**

#### Windows

The proposed changes to the windows design and layout is unlikely to result in unreasonable over looking of the adjoining properties.

The additional windows on the southern elevation are located off a bathroom (WIS1), walk-in-robe (WIS2) and ensuite (WIS3). On the northern elevation the additional windows are off an inset stairwell (WIN2). These windows are located off rooms/areas that are considered low use, the bathroom and ensuite are highlight windows and all of these windows are adequately separated from the adjoining properties.

The change to window WIN1 located off Bedroom B4 (by increasing the size in height of the window) will not result in additional privacy impacts on the adjoining neighbours. The window is offset from the windows on the adjoining property and adequately separated.

#### Balconies/Decks

The increase to the ground floor deck involves a 200mm increase towards the southern boundary to align with the southern edge of the dwelling. This edge continues to include the solid wall and will not result in any privacy impact.

The increase to the first floor (off Bedroom 4) involves a 0.5m increase towards the west. This will not result in any adverse privacy impact to neighbouring properties as the northern edge remains concealed by a solid wall.

#### Ground Floor Terrace (Northern Elevation)

The terrace previously approved on the northern elevation has been altered to adjust the ground levels and to remove the screen which was originally included along the northern edge to conceal the courtyard. It is noted that the northern edge of the development This feature was included as part of that development and not required as a condition to address privacy (instead it appears that it was included to provide a buffer from the shared driveway which abuts that side of the site).

Notwithstanding, given the 6m separation between the proposed courtyard and the southern facade of the neighbouring building to the north, it is considered that the continued use of a screen (fixed or planting) would be beneficial in terms of mutual protection of privacy. A condition is imposed in this regard.

### **D10.13 Landscaped Area - Environmentally Sensitive Land**

#### Description of non-compliance

The control requires a minimum of 60% (522.18m<sup>2</sup>) of the site area to be landscaped. The application proposes a total landscaped area of 34% (302.3m<sup>2</sup>). The development application DA2019/1497 was approved with a landscaped area of 46% (399m<sup>2</sup>). Since that approval was granted, development application DA2021/0323 was approved for the demolition works and construction of a swimming pool and cabana. These works further reduced the landscaping on the site from what was approved under DA2019/1497.

The site is also burdened with a right of way along the northern boundary which contributes 107.2m<sup>2</sup> of hard surface and significantly reducing the available landscaped area on the site.

Provided the outcomes of this control are achieved, impervious areas less than 1m in width and impervious landscape treatments providing these areas are for outdoor recreational purposes only up to 6% of site area can be included in the landscaped area calculation. The inclusion of this variation to the landscaped area increases the calculation to 354.51m<sup>2</sup>, 40.73% of site area.

#### Merit assessment

With regard to the consideration for a variation, the development is considered against the underlying objectives of the Control as follows:

- ***Achieve the desired future character of the Locality.***

#### Comment:

The proposed modifications retains a development that is compliant with the requirements of Clause A4.10 Newport Locality.

- ***The bulk and scale of the built form is minimised.***

#### Comment:

The modification will result in a reduction in height of the proposal while maintaining the approved setbacks to the front and side boundaries. The rear boundary setback is reduced, however the proposal still exceeds the rear building line requirements of the PDGP. It is considered that the modification helps to minimise the bulk and scale of the built form.

- ***A reasonable level of amenity and solar access is provided and maintained.***

Comment:

The proposed modifications retains reasonable amenity and solar access for the subject site and adjoining sites.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposed modifications does not require removal of significant vegetation, and, as above, the built form is reduced.

- ***Conservation of natural vegetation and biodiversity.***

Comment:

The proposed modifications retain ample natural vegetation and the existing biodiversity on site.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***

Comment:

The proposed modifications to the development retains ample soft open space to assist with reducing runoff, soil erosion and siltation.

- ***To preserve and enhance the rural and bushland character of the area.***

Comment:

The subject site is not classified as rural, though retains the existing character of the site.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***

Comment:

The dimensions of the proposed landscape open space area is considered reasonable to provide infiltration of water and minimise run off.

In light of the above, the proposal is considered to satisfy the outcomes of the control, thereby allowing for a 6% variation to be included as landscaped area, bringing the total to 354.51m<sup>2</sup> or 40.73%.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **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
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

### Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

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. Mod2021/0790 for Modification of Development Consent DA2019/1497 for Alterations and additions to a dwelling house on land at Lot 481 DP 233572, 10 Nooal Street, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
S455.03(a) - Site Plan	24/9/2021	Matt Thitchener Architect
S455.11 - Lower Ground Floor Plan	24/9/2021	Matt Thitchener Architect
S455.12(a) - Ground Floor Plan	7/12/2021	Matt Thitchener Architect
S455.13 - 1st Floor Plan	24/9/2021	Matt Thitchener Architect
S455.14 - Roof Plan	7/12/2021	Matt Thitchener Architect
S455.21 - Sections	24/9/2021	Matt Thitchener Architect
S455.31(a) - Elevations	7/12/2021	Matt Thitchener Architect

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate (Certificate Number: A426830)	23 September 2021	Matt Thitchener

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

d) 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 - No works are approved within the Easement or Right of Carriageway to read as follows:**

This approval does not consent to any works within an easement or right of carriageway. Any works indicated on the plans that are located within an easement or right of carriageway are to be removed.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.



### **C. Add Condition 8B - Privacy treatments**

The northern edge of the ground floor terrace (labeled 'Terraced LSCP' on the approved plans) is to include:

(a) A fixed privacy screen and at height of 1.65m above the finished floor level of the terrace edge (top of wall). The screen may consist of louvres which are fixed and positioned to avoid any overlooking opportunities into the south-facing windows of the rear private open space area of the neighbouring property to the north;

or

(b) Screen planting of sufficient height and density is to be installed along the northern edge of the terrace to avoid any overlooking opportunities into the south-facing windows and rear private open space area of the neighbouring property to the north.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To protect the privacy of neighbouring land.

### **D. Add Condition 18 - No cooking Facilities in Lower Ground Floor Rumpus to read as follows:**

The Lower Ground Floor Rumpus Kitchenette is not to include any cooking facilities.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure the Lower Ground Floor Rumpus is not used as a Secondary Dwelling.

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

### **Signed**



**Julie Edwards, Planner**

The application is determined on 21/12/2021, under the delegated authority of:



**Tony Collier, Acting Development Assessment Manager**