

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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|---|---|
| Application Number: | Mod2023/0522 |
| Responsible Officer: | Stephanie Gelder |
| Land to be developed (Address): | Lot 1 DP 1263133, 31 Marine Parade AVALON BEACH NSW 2107 |
| Proposed Development: | Modification of Development Consent DA2021/0981 granted for Demolition works and Construction of a New Dwelling |
| Zoning: | C2 Environmental Conservation C4 Environmental Living |
| Development Permissible: | Yes - Zone C2 Environmental Conservation Yes - Zone C4 Environmental Living |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Eileen Joyce Blackall |
| Applicant: | Thomas Martin |

| | |
|----------------------------------|----------------------------------|
| Application Lodged: | 04/10/2023 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Refer to Development Application |
| Notified: | 10/10/2023 to 24/10/2023 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification works to DA2021/0981 comprise of the following:

Lower Ground Floor Plan

- Proposed Modification – (Alteration) to the internal walls and layout including the Stairs, Powder Room, Living, Dining Area and Kitchen;
- Proposed Modification – (Alteration) to Proposed Lower Ground Floor FFL. Raised FFL by 223mm and reduced amount of excavation;

- Proposed Modification – (Alteration) to Eastern doors. Previously approved doors now replaced with windows;
- Proposed Modification – (Alteration) to Southern Doors & Windows. Previously approved doors and windows now replaced with singular door Unit;
- Proposed Modification – (Addition) of windows on the Western Façade in the Kitchen and Dining Area;
- Proposed Modification – (Alteration) to Lower Ground Floor Gross Floor area. The Southern façade has shifted South by 1033mm thus increasing the Internal Gross Floor Area by 9.4sqm. The width of the Deck has been reduced in depth by 1033mm to retain the previously approved footprint and be wholly within the Foreshore Building Line;
- Proposed Modification – (Addition) of 1.6m privacy screen in accordance with condition 11 of approved DA2021/0981;
- Proposed Modification – (Removal) of externally expressed stone chimney on the Eastern Facade. Replaced with a Steel Flue & Cowl for the Gas Fireplace;

Ground Floor Plan

- Proposed Modification – (Alteration) to the internal walls and layout;
- Proposed Modification – (Alteration) to Northern Doors. Previously approved doors replaced with windows;
- Proposed Modification – (Alteration) to the size of the previously approved Window in the Bathroom;
- Proposed Modification – (Alteration) to Western Windows. Change in the location of the previously approved Windows in the Walk In Robe and Master Bedroom. Change to the Size of the previously approved window in the Ensuite;
- Proposed Modification – (Addition) of a window on the Western Façade in the Master Bedroom;
- Proposed Modification – (Alteration) to W07, W08, W09 and W10. Obscured Glazing in accordance with Condition 11 of the approved DA2021/0981. (Formerly noted as W03, W04 & W05);

Roof Plan

- Proposed Modification - (Alteration) to significantly reduce the extent of the Lower Ground Floor's Hip Roof. The proposed Hip Roof no longer extends over the Lower Ground Floor Deck Area. A smaller Timber Pergola Structure is now proposed over the Lower Ground Floor Deck Area;
- Proposed Modification - (Alteration) to all Roof Pitches and a reduction in the proposed Ridge Height of all roofs (dimensions noted on plans);
- Proposed Modification – (Addition) of skylights in Garage, over the Ground Floor Hallway, Bathroom and over the Lower Ground Floor Kitchen, Living and Dining Area;

Landscaping

- Proposed Modification - (Removal) of Retaining Wall, Landscape Stairs on the Lower ground Floor;
- Proposed Modification – (Removal) of the Outdoor Pizza Oven in accordance with Condition 11 of the approved DA2021/0981;
- Proposed Modification – (Removal) of the Olea europea subsp. europea Trees in accordance Condition 10 of the approved DA2021/0981. Replaced with Acacia Suaveolens;

- Proposed Modification – (Removal) of the Fence and Gate located in the C2 Environmental Conservation Zone in accordance Condition 20 of the approved DA2021/0981;
- Proposed Modification - (Removal) of Western Side Access stairs and proposed retainment of Existing Natural Ground Level; and
- Proposed Modification - (Removal) of previously proposed Boardwalk on Garage & Ground Floor Level. Boardwalk to be replaced by Steppers.

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 - 5.1A Development on land intended to be acquired for public purpose

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D1.11 Building envelope

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 1 DP 1263133 , 31 Marine Parade AVALON BEACH NSW 2107 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the southern side of Marine Parade.</p> <p>The site is irregular in shape with a frontage of 12.91m along Marine Parade and a depth of 106.68m. The site has a surveyed area of 1347m².</p> <p>The site is located within the C2 Environmental</p> |

Conservation zone and C4 Environmental Living zone of PLEP 2014. The site accommodates a dwelling house currently on the site.

The site slopes from the front north-eastern corner downwards to the rear south-western corner over approximately 23 metres.

The site contains plantings, trees, and dense vegetation towards to the rear of the site. There are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design. Directly to the south of the site is North Avalon Beach.

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:

DA2020/1766

Development Application for Demolition works and construction of dwelling house.
Withdrawn on 3 March 2021.

DA2021/0981

Development Application for Demolition works and Construction of a New Dwelling.
Approved on 4 February 2022.

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 DA2021/0981, 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>Yes</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"> • The proposal, as modified is considered to be of minimal environmental impacts with the maximum height of buildings being reduced. • The proposal is consistent with the built form controls, as approved with the improvement to the building envelope, and landscaped area control. • Overall, it is considered that the works are of minimal environmental impact, and will not result in any adverse amenity impacts. |
| (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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/0981 for the following reasons:</p> <ul style="list-style-type: none"> • The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/0981. |

| Section 4.55(1A) - Other Modifications | Comments |
|--|---|
| <p>(c) it has notified the application in 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>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, 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>See discussion on “Notification & Submissions Received” in this report.</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 | There are no current draft environmental planning instruments. |
| 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)(iia) – Provisions of any planning agreement | None applicable. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021) | <p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on "Notification & Submissions Received" in this report. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| 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 10/10/2023 to 24/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

| Name: | Address: |
|-------------------|--|
| Ms Maryline Norsa | 33 Marine Parade AVALON BEACH NSW 2107 |

The following issues were raised in the submissions:

- **Solar Access**
- **View Sharing**

The above issues are addressed as follows:

- **Solar Access**

The submissions raised concerns surrounding the raised ground floor FFL by 223mm. Concern is raised that, "*The raised height of the proposed wall structure will impinge upon the light and overshadowing across the subject site from the proposed dwelling under DA consent N0080/15, currently under construction*".

Comment:

The amended plans include shadow Diagrams (DA-900, DA-901, & DA-902) that depicted the proposed shadows at 9am, 12pm, and 3pm on the 21 June. The amended shadow diagrams depicted a reduced overshadowing to No.33 Marine Parade as highlighted by the orange shading. Furthermore, the proposal is compliant with the requirements of Clause C1.4 Solar Access of Pittwater 21 Development Control Plan.

- **View Sharing**

The submissions raised concerns surrounding the southern facade shifting south by 1033mm. Concern is raised that, *"The increased area to the lower ground floor has resulted in the wall structure further impinging upon the view corridor across the subject site from the living area of the proposed dwelling under DA consent N0080/15, currently under construction"*.

Comment:

A detailed view sharing assessment was conducted in the Assessment Report for DA2021/0981. The proposed modification works seeks to shift the southern rear facade of the lower ground floor 1033mm to the south in the location of the approved outdoor terrace. It is important to note that the proposed outdoor terrace does not extend further south, however is reduced in width as a result of the southern facade of the dwelling house being relocated 1033mm to the south. The view assessment conducted in DA2021/0981 included the installation of height poles, and concluded that the view impact as a result of the proposed development is minor to the adjoining site at No.33 Marine Parade.

It should be noted that the proposal has reduced the roof height, that will present an increase of view sharing in comparison the approved plans under DA2021/0981. Therefore, it is considered that the original assessment is retained, and as the proposal presents a reduced height, the proposal, as modified will continue to result in a minor view impact that is considered acceptable.

Concluding Comments:

In summary, the concerns raised have been addressed and do not warrant the refusal of the proposed modification application.

REFERRALS

| Internal Referral Body | Comments |
|--|---|
| Environmental Health (Solid Fuel/Oil Heater) | <p>General Comments</p> <p>This application is seeking consent for modifications to DA2021/0981. There are many internal and external modification however in relation to the fireplace the following is stated:</p> <p><i>Proposed Modification – (Removal) of externally expressed stone chimney on the Eastern Facade. Replaced with a Steel Flue & Cowl for the Gas Fireplace.</i></p> <p>Enironmental Health have no health concerns with a gas fireplace and recommend approval.</p> |
| Landscape Officer | <p>The application is for modification to development consent DA2021/0981.</p> <p>The proposed amendments will not change the landscape outcome approved and conditioned in DA2021/0981, and as such the original conditions remain. Condition 31 Landscape Completion shall be amended as part of this modification to align with condition 35 Replacement of Canopy Trees.</p> |
| NECC (Bushland and Biodiversity) | <p>The proposed modification has been assessed against the following applicable controls:</p> |

| Internal Referral Body | Comments |
|--------------------------------|--|
| | <ul style="list-style-type: none"> • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.6 Wildlife Corridors • SEPP (Resilience and Hazards) - Coastal Environment Area <p>The modifications will not result in additional impacts to biodiversity. There are therefore no objections.</p> |
| NECC (Coast and Catchments) | <p>The proposal seeks approval for modification of development consent DA 2021/0981 granted for alterations and additions to a dwelling house including reduction to Roof Heights & Footprint, Minor changes to Window and Doors, and Increase to Landscaped Area</p> <p>The subject property is located within the 'Coastal Environment Area' and the 'Coastal Use Area' maps of the Coastal Zone. In addition, the subject property is affected by coastal bluff. Part of the subject property is within the 'Foreshores Building Line'.</p> <p>This application was assessed in consideration of:</p> <p>Supplied plans and reports, including;</p> <ul style="list-style-type: none"> • Statement of Modifications by Rama Architects Pty. Ltd. dated 15 August 2023 • Coastal Engineering Advice by Horton Coastal Engineering Pty. Ltd. dated 8 September 2023 • Coastal Management Act 2018 • State Environmental Planning Policy (Resilience & Hazards) 2021 • Relevant LEP and DCP Clauses <p>The proposed modifications appear consistent with the design intent of the original proposal. No conditions in additions to those for the original development application are considered necessary.</p> |
| NECC (Development Engineering) | <p>The application is for the modification of Consent DA2021/0981. Letter from the geotechnical engineer has been submitted to state no changes are required to the previously submitted Geotechnical Report by White Geotechnical Group, dated 9/6/2021. Updated stormwater plans have been provided.</p> <p>No objections to approval subject to the following:</p> <p>Condition 7 under heading Stormwater Disposal is to be amended to reflect the new date of 15/9/2023 for the plans by Stellen Consulting Engineers.</p> |

| External Referral Body | Comments |
|----------------------------|---|
| Aboriginal Heritage Office | <p>Development Application No. Mod2023/0522 Description: Modification of Development Consent DA2021/0981 granted for Demolition works and Construction of a New Dwelling Address: 31 Marine Parade AVALON BEACH</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p> |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1212234S_02 dated 20 September 2023). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.008890030 dated 08 September 2023).

The BASIX Certificate indicates that the development will achieve the following:

| Commitment | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water | 40 | 40 |
| Thermal Comfort | Pass | Pass |
| Energy | 50 | 51 |

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 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.

Comment:

The subject site is located within land identified as "coastal environment area". The proposed development is not likely to cause adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

- 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 subsection (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:

The proposed development has been designed, sited, and managed to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - 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
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or 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.

Comment:

The proposed development is not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The proposal has been designed, sited, and managed to avoid any adverse impacts as detailed under Clause 2.11(1)(a)(i-v) inclusive.

Division 5 General

2.12 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 not likely to cause an increased risk of coastal hazards on the land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

There is no certified coastal management program applicable to the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State

Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

| | |
|--|--------------------------------|
| Is the development permissible? | Zone C2 : Yes Zone C4 : Yes |
| After consideration of the merits of the proposal, is the development consistent with: | |
| aims of the LEP? | Yes |
| zone objectives of the LEP? | Zone C2 : Yes Zone C4 : Yes |

Principal Development Standards

| Development Standard | Requirement | Approved | Proposed | % Variation | Complies |
|-----------------------------|--------------------|-----------------|-----------------|--------------------|-----------------|
| Height of Buildings: | 8.5m | 6.3m | 5.5m | - | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|-------------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes |
| 4.3 Height of buildings | Yes |
| 5.1 Relevant acquisition authority | Yes |
| 5.1A Development on land intended to be acquired for public purpose | Yes |
| 5.7 Development below mean high water mark | Yes |
| 7.1 Acid sulfate soils | Yes |
| 7.2 Earthworks | Yes |
| 7.5 Coastal risk planning | Yes |
| 7.6 Biodiversity protection | Yes |
| 7.7 Geotechnical hazards | Yes |
| 7.8 Limited development on foreshore area | Yes |
| 7.10 Essential services | Yes |

Detailed Assessment

5.1A Development on land intended to be acquired for public purpose

Under DA2021/0981, Condition 20 - No approval for works within the C2 Environmental Conservation

zone was imposed requiring the proposed fence, and gate within this zone is to be deleted.

The amended plans detail the deletion of the proposed fence within the C2 Environmental Conservation zone.

Notwithstanding, Condition 20 will remain to ensure no works are undertaken within the C2 Environmental Conservation zone.

7.8 Limited development on foreshore area

Under DA2021/0981, a condition of consent was included to delete the pizza oven from the plans as it is inconsistent with Clause 7.8 Limited development on foreshore area.

The amended plans have deleted the pizza oven, and as such Condition 11 will be deleted, as the pizza oven has been removed from the plans under this application.

Pittwater 21 Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Approved | Proposed | Complies |
|---------------------|-------------------------|--|--------------------------------|----------|
| Front building line | 6.5m | 6.5m | unaltered | Yes |
| Rear building line | Foreshore Building Line | Pizza oven and terrace: Within Foreshore area (<i>Deleted via condition</i>) Dwelling: Behind Foreshore building line | Behind Foreshore Building Line | Yes |
| Side building line | 2.5m | 2.5m | unaltered | Yes |
| | 1m | 1m | unaltered | Yes |
| Building envelope | 3.5m | East: Within Envelope | Within Envelope | Yes |
| | 3.5m | West: Outside Envelope | Outside Envelope | No |
| Landscaped area | 50% | 53.5% (458m ²) | 55.0% (470.8m ²) | No |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted | Yes | Yes |
| A4.1 Avalon Beach Locality | Yes | Yes |
| B1.3 Heritage Conservation - General | Yes | Yes |
| B1.4 Aboriginal Heritage Significance | Yes | Yes |
| B3.1 Landslip Hazard | Yes | Yes |
| B3.4 Coastline (Bluff) Hazard | Yes | Yes |
| B3.6 Contaminated Land and Potentially Contaminated Land | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| B4.6 Wildlife Corridors | Yes | Yes |
| B5.13 Development on Waterfront Land | Yes | Yes |
| B5.15 Stormwater | Yes | Yes |
| B6.1 Access driveways and Works on the Public Road Reserve | Yes | Yes |
| B6.2 Internal Driveways | Yes | Yes |
| B6.3 Off-Street Vehicle Parking Requirements | Yes | Yes |
| B8.1 Construction and Demolition - Excavation and Landfill | Yes | Yes |
| B8.3 Construction and Demolition - Waste Minimisation | Yes | Yes |
| B8.4 Construction and Demolition - Site Fencing and Security | Yes | Yes |
| 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 |
| C1.12 Waste and Recycling Facilities | Yes | Yes |
| C1.13 Pollution Control | Yes | Yes |
| C1.23 Eaves | Yes | Yes |
| C1.24 Public Road Reserve - Landscaping and Infrastructure | Yes | Yes |
| C1.25 Plant, Equipment Boxes and Lift Over-Run | Yes | Yes |
| D1.1 Character as viewed from a public place | Yes | Yes |
| D1.5 Building colours and materials | Yes | Yes |
| D1.8 Front building line | Yes | Yes |
| D1.9 Side and rear building line | Yes | Yes |
| D1.11 Building envelope | No | Yes |
| D1.14 Landscaped Area - Environmentally Sensitive Land | No | Yes |
| D1.15 Fences - General | Yes | Yes |
| D1.17 Construction, Retaining walls, terracing and undercroft areas | Yes | Yes |
| D1.20 Scenic Protection Category One Areas | Yes | Yes |

Detailed Assessment

C1.5 Visual Privacy

Under DA2021/0981, Condition 11 - Amendments to approved plans, included the following amendments are to be made to the approved plans:

- *Windows 3,4 and 5 are to be provided with a minimum sill height of 1.6m, or obscured.*
- *A 1.6m privacy screen is to be provided along the extent of the western elevation of the rear outdoor terrace.*

The amended plans, include annotations to obscure windows 3,4,5 (now renamed as W07, W08, W09, W10). Furthermore, the approved plans include a 1.6m privacy screen along the outer edge of the western elevation of the rear outdoor terrace.

As the proposed modification plans have included the amendments, Condition 11 is recommended to be deleted, as no further changes are required to the approved plans prior to the issue of a Construction Certificate.

D1.11 Building envelope

A detailed merit assessment was conducted under DA2021/0981 as the proposal did not comply with the building envelope control along the western elevation.

The proposed modification works reduces the building envelope non-compliance along the western elevation.

As such, no further assessment is required, as the approved building envelope non-compliance has been reduced.

D1.14 Landscaped Area - Environmentally Sensitive Land

A detailed merit assessment was conducted under DA2021/0981 as the proposal did not comply with the landscaped area control.

The proposed modification works increase the landscaped area by 12.8m² as a result of the approved boardwalk being removed and replaced with steppers.

As such, no further assessment is required, as the approved landscaped area non-compliance has been reduced.

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 2022

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 2021;
- 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. Mod2023/0522 for Modification of Development Consent DA2021/0981 granted for Demolition works and Construction of a New Dwelling on land at Lot 1 DP 1263133,31 Marine Parade, AVALON BEACH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

| Application Number | Determination Date | Modification description |
|----------------------------|--|---|
| PAN-373018 Mod2023/0522 | The date of this notice of determination | Modification of Development Consent DA2021/0981 granted for Demolition works and Construction of a New Dwelling |

| | | |
|--|--|--|
| | | Add Condition 1A - Modification of Consent - Approved Plans and supporting documentation Modify Condition 7 - Stormwater Disposal Delete Condition 11 - Amendments to the approved plans Modify Condition 31 - Landscape Completion |
|--|--|--|

Modified conditions

A. Add Condition 1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

| Approved Plans | | | | |
|-----------------------|------------------------|---|-----------------|---------------------|
| Plan Number | Revision Number | Plan Title | Drawn By | Date of Plan |
| DA-001 | C | Site Plan | Rama | 15 August 2023 |
| DA-100 | C | Lower Ground General Arrangement Plan | Rama | 15 August 2023 |
| DA-101 | C | Garage General Arrangement Plan | Rama | 15 August 2023 |
| DA-102 | C | Ground Floor General Arrangement Plan | Rama | 15 August 2023 |
| DA-300 | C | Elevation Sheet 01 | Rama | 15 August 2023 |
| DA-301 | C | Elevation Sheet 02 | Rama | 15 August 2023 |
| DA-302 | C | Elevation Sheet 03 | Rama | 15 August 2023 |
| DA-303 | C | Elevation Sheet 04 | Rama | 15 August 2023 |
| DA-400 | C | Section Sheet 01 | Rama | 15 August 2023 |
| DA-401 | C | Section Sheet 02 | Rama | 15 August 2023 |
| DA-503 | C | Waste Management, Sediment Control & Erosion Plan | Rama | 15 August 2023 |

| Approved Reports and Documentation | | | |
|---|-----------------------|----------------------------|-------------------------|
| Document Title | Version Number | Prepared By | Date of Document |
| Arboricultural Report | - | Growing My Way | 25 August 2023 |
| BASIX Certificate | 1212234S_02 | Rama Architects Pty Ltd | 20 September 2023 |
| Coastal Assessment Report | - | Horton Coastal Engineering | 8 September 2023 |

| | | | |
|--|------------|--------------------------------|-------------------|
| Geotechnical Report | J3054B | White Geotechnical Group | 30 August 2023 |
| NatHERS Certificate | 0008890030 | Efficiency Assessments Pty Ltd | 08 September 2023 |
| Landscape Concept Plan Sheet 01 - DA-500 | C | Rama | 15 August 2023 |
| Landscape Concept Plan Sheet 02 - DA-501 | C | Rama | 15 August 2023 |
| Schedule of External Finishes (Cover Page & Drawing Schedule) - DA-000 | C | Rama | 15 August 2023 |
| Stormwater Report | - | Stellen Civil Engineering | 22 September 2023 |
| Legend - DR-000 | 3 | Stellen Consulting | 15 September 2023 |
| Pipe Layout and Details - DR-001 | 4 | Stellen Consulting | 15 September 2023 |
| Roof Layout & Rainwater Tank Details - DR-002 | 3 | Stellen Consulting | 15 September 2023 |
| Details - DR003 | 1 | Stellen Consulting | 15 September 2023 |

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Modify Condition 7 - Stormwater Disposal to read as follows:

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater discharge from the site shall be generally in accordance with the concept drainage plans prepared by Stellen Consulting Engineers, drawing no. Dr-000 to DR-003, dated 15/09/2023 and geotechnical report prepared by White Geotechnical Group, dated 9/6/2021.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from the

development.

C. Delete Condition 11 - Amendments to the approved plans to read as follows:

DELETED.

D. Modify Condition 31 - Landscape Completion to read as follows:

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) at least four (4) locally native trees shall be planted within the property capable of attaining 8.5 metres or more in height at maturity, at a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees, and shall be selected from Council's Native Plant Species Guide - Pittwater Ward,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 5 metres from buildings, and at least 2 metres from common boundaries,
- iii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative. <https://5milliontrees.nsw.gov.au/>

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

Signed



Stephanie Gelder, Planner

The application is determined on 26/10/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments