

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0966
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 53 DP 22275, 49 Binburra Avenue AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2021/0329 granted for alterations and additions to a dwelling house including swimming pool and driveway
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	William Leslie Kiloh Aleisha Jane Kiloh
Applicant:	THW Architects

Application Lodged:	19/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	28/01/2022 to 11/02/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 4.55(2) of the EP & A Act 1979 and seeks to modify the existing consent (DA2021/0329) for alterations and additions to an existing dwelling house (including swimming pool) in the following manner:

- relocation of approved swimming pool from the adjoining the rear (north-west) boundary to the side (south-west) boundary;
- extend edge of wall on front elevation (Bedroom 5) by 600mm to accommodate a built-in robe and services area for water-tank;
- increase upper floor wall on south elevation by 200mm; and
- privacy screen on upper north elevation balcony.

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 - D1.9 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 53 DP 22275 , 49 Binburra Avenue AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site is known as 49 Binburra Avenue, Avalon Beach and is legally referred to as Lot 53 DP 22275. The site consists of one (1) allotment located on the northern side of Binburra Avenue. The site is regular in shape with a frontage of 18.965m along Binburra Avenue and a depth of 33.59m. The site has a surveyed area of 588.1m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two (2) storey dwelling house that is currently undergoing renovations works.</p> <p>The site is mapped within the Geotechnical Hazard Map, Northern Beaches Bush Fire Prone Land Map and Biodiversity Map.</p> <p>The slope of the site is measured at 22%, falling approximately 7.42m from the road frontage to the rear boundary.</p> <p>The site is of a modified landscaped setting, with vegetation</p>

consisting of lawned turf areas and tropical plantings such as Frangipanis.

Adjoining and surrounding development is characterised by dwelling houses within landscaped/bushland settings.

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:

DA2021/0329: Consent granted for "Alterations and additions to a dwelling house including swimming pool and driveway" on 2 June 2021. This is the consent that is the subject of the proposed modification.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/0329, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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 DA2021/0329 for the following reasons:</p> <ul style="list-style-type: none"> • the swimming pool is substantially the same in shape and dimension, just relocated to a different area within the rear yard; and • the modifications to the approved works within the dwelling house are minor in scope.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/0329 did not require concurrence from the relevant Minister, public authority or approval body.
(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, and the Northern Beaches Community Participation 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.	No submissions were received in relation to this application.

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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

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

Section 4.15 'Matters for Consideration'	Comments
	<p>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 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 (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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by TFC, dated 29 October 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/01/2022 to 11/02/2022 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
NECC (Bushland and Biodiversity)	Council's Natural Environment Unit - Biodiversity referral team has no objections to the p
NECC (Development Engineering)	<p>Applicant seeks to relocate proposed swimming pool. As a result the dispersal stormwater</p> <p>1. Delete the approved Engineering plans listed below: SW1A Dated May 2021 SW2 Dated May 2021 Sw3 Dated May 2021</p> <p>REPLACE WITH :</p> <p>SW1 B Dated November 2021</p>

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External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response on 21 February 2022 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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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 (Building Sustainability Index: BASIX) 2004

A revised BASIX certificate, to support the material change proposed in the modification, has been submitted with the application (see Certificate No.A406333_05 dated 14 January 2022).

The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.

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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

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	7.6m	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
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	3.6m (garage) 7.18m (dwelling)	unaltered unaltered	Yes Yes
Rear building line	6.5m	2m (swimming pool) 10.2m (dwelling)	2.6m unaltered	No Yes
Side building line	2.5m (north)	3.8m (dwelling)	unaltered	Yes
	1m (south)	1m (dwelling) 2m (pool)	0.796m 1m (pool)	No Yes
Building envelope	3.5m / 45 degrees (north)	Within envelope	unaltered	Yes
	3.5m / 45 degrees (south)	Outside envelope	unaltered	No
Landscaped area	60%	269.2m ² or 45.78%	320.3m ² or 55%	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
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	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
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
C1.17 Swimming Pool Safety	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Detailed Assessment

D1.9 Side and rear building line

Description of Non-Compliance

The following non-compliances are identified:

- 2.67m rear setback for the pool, within the 6m minimum requirement; and
- 0.796m for the upper south elevation, at it's closest point, short of the 1m minimum side setback.

Consideration of the Outcomes of the control/s

A consideration of the following relevant Outcomes is provided below:

The bulk and scale of the built form is minimised. (En, S)

Comment: The extent of the variation to the south elevation wall is minor (200mm in effect) and only applies to part of this wall. In regard to the pool, the proposal will in effect increase the rear setback from the existing approval. Hence, the bulk and scale of the built form is sufficiently minimised.

Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment: The extent of the proposed modification is minor and is unlikely to result in any significant

view loss.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment: As stated above, no view loss is likely as a result of the proposed modification to both the south elevation wall and the pool.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: No adverse amenity impact is likely as a result of the proposed modifications.

Upon consideration of the above Outcomes, no adverse impact is likely and the proposed modifications are supported despite the non-compliance with the minimum standards.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0966 for Modification of Development Consent DA2021/0329 granted for alterations and additions to a dwelling house including swimming pool and driveway on land at Lot 53 DP 22275,49 Binburra Avenue, AVALON BEACH, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A 01 Revision H	19 October 2021	THW Architects
A 02 Revision H	19 October 2021	THW Architects
A 03 Revision H	19 October 2021	THW Architects
A 10 Revision H	19 October 2021	THW Architects
A 11 Revision H	19 October 2021	THW Architects
A 12 Revision H	19 October 2021	THW Architects
A 13 Revision H	19 October 2021	THW Architects
A 20 Revision H	19 October 2021	THW Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1B Revision B	November 21	Barrenjoey Consulting Engineers
SW2	November 21	Barrenjoey Consulting Engineers
SW3	November 21	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
A406333_05	14 January 2022	THW Architects

Bush Fire Hazard Assessment Report	29 October 2021	TFC
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
01 Revision B	19 October 2021	SAS Landscape Design

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

B. Modify Condition No.9 On-site Stormwater Detention Details to read as follows:

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers Pty Ltd, Job Number. 210205, Drawing number SW1 to SW3, Issue-B, Dated November 2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i) OSD to be provided in accordance with Clause 9.0 of Council's Water Management for Development Policy.
- ii) Dispersion trench is to be 3m away from the site boundary.
- iii) Dispersion trench to be provided parallel to the contours.
- iv) Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

Signed



Nick England, Planner

The application is determined on 31/03/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager