



statement of modification



MODIFICATIONS TO DA2021/2442

90 CABBAGE TREE ROAD
BAYVIEW NSW 2104

August 2024

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introduction

This statement of modification has been prepared by Northern Beaches Planning on behalf of Casey Brown Architecture to accompany the lodgement of an application to modify Development Consent DA2021/2442 which approved the construction of a swimming pool, spa and pavilion at 90 Cabbage Tree Road, Bayview (**site**).

This statement is informed and accompanied by the following documentation:

- Architectural Plans by Casey Brown Architecture
- Survey by CMS Surveyors
- Stormwater Management Plans by Inline Hydraulic Services
- BASIX Certificate by Lin & Associates
- Bushfire Report by Bushfire Planning Services
- Geotechnical Report by MM Geomechanics
- Heritage Report by John Oultram Heritage & Design
- Waste Minimisation Plan by Casey Brown Architecture
- Arboricultural Impact Assessment by Growing My Way Tree Consultants

site details

The site is legally identified as Lot 22 in Deposited Plan 602041, and is commonly referred to as 90 Cabbage Tree Road, Bayview. The site is irregular in shape, with frontage approximately 90m wide to Cabbage Tree Road, a maximum depth of approximately 395m and a total area of 3.17 Hectares.

A single storey dwelling is situated on the site, towards the frontage of the site. Vehicular access is gained from Cabbage Tree Road via a driveway and associated right of carriageway that burdens two neighbouring properties to the east (86 and 88 Cabbage Tree Road). The site experiences a considerable fall from the street frontage, down towards the rear. The site is heavily vegetated, and there are two natural watercourses that bisect the site.

The existing dwelling and garden are identified as an item of local heritage significance.

The site is identified as being prone to bushfire, flooding and geotechnical hazards.

The site is surrounded by residential properties with varying lot sizes and with buildings of varying age and architectural style in a heavily landscaped setting.

Aerial images of the site and its surrounds is provided in Figures 1 and 2 on the following page.

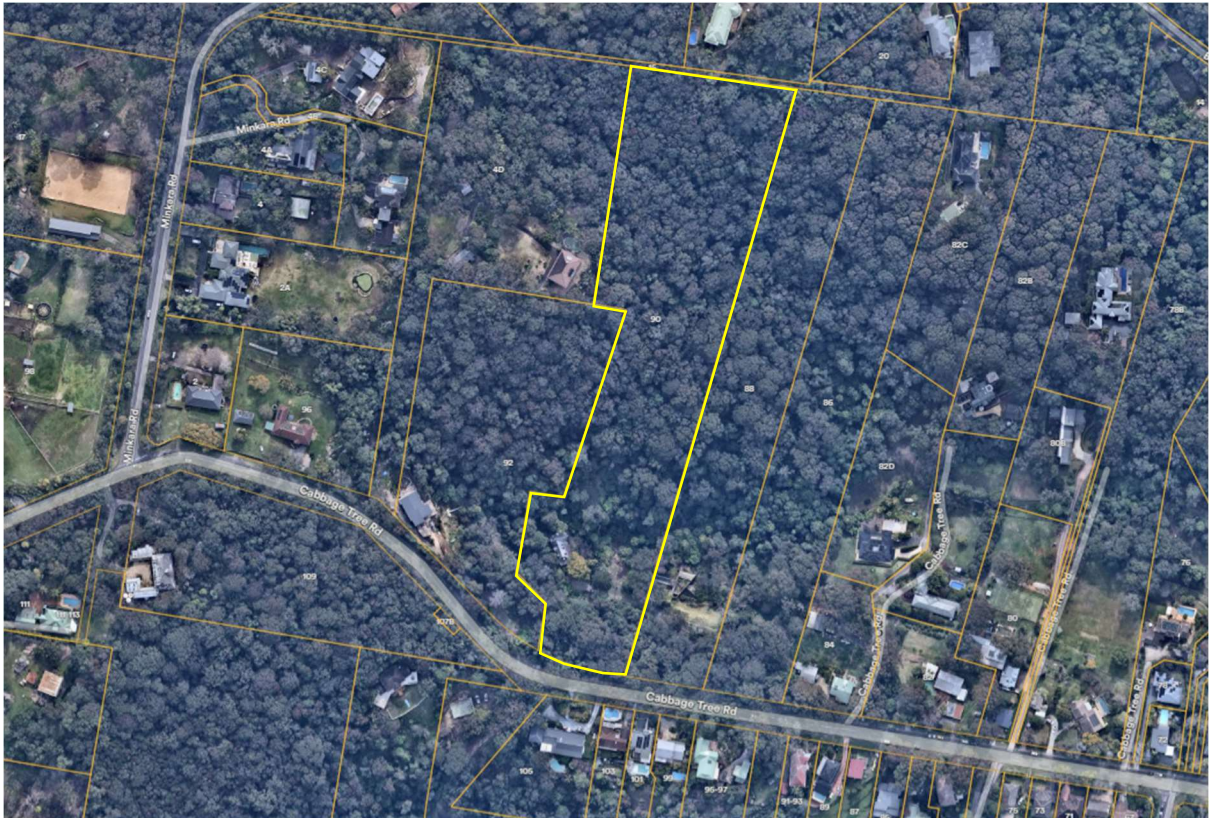


Figure 1 – Aerial image with site bordered in yellow
Source: Nearmap

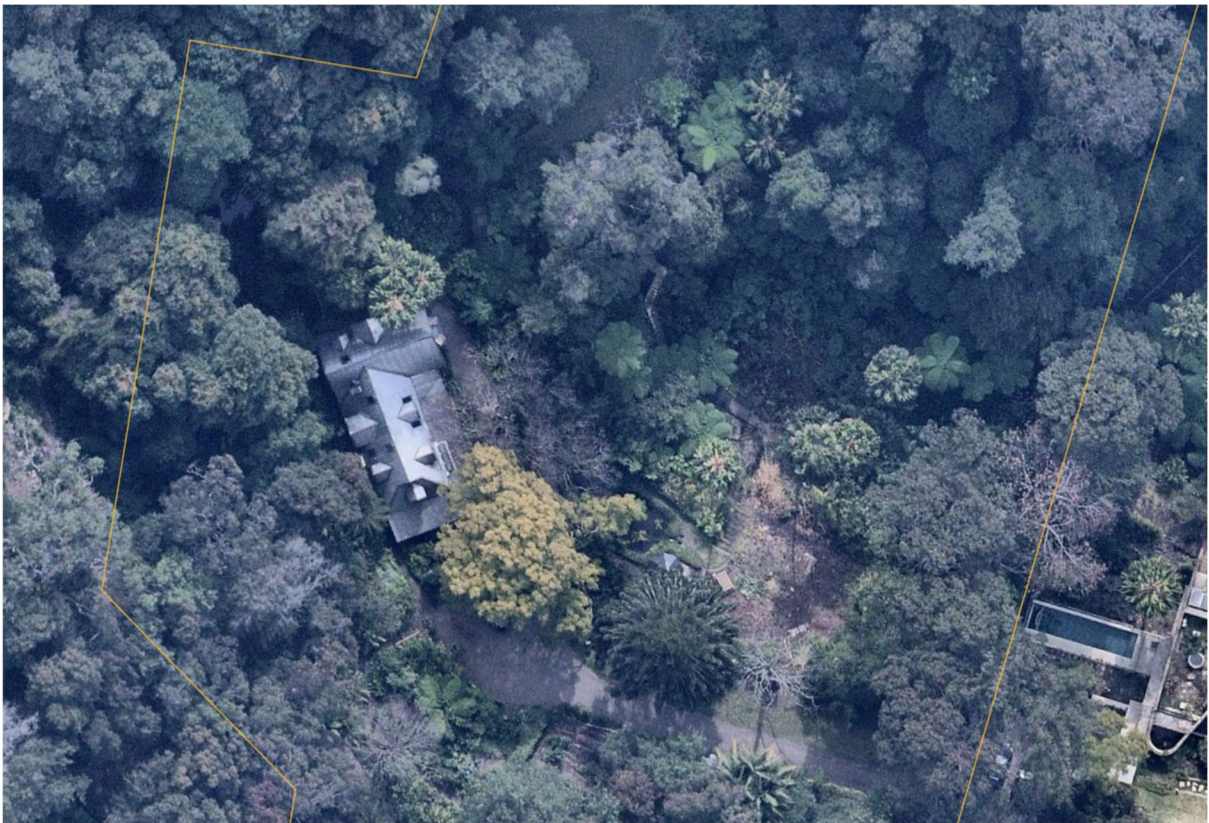


Figure 2 – Aerial image (zoom) of the existing dwelling and location of proposed swimming pool
Source: Nearmap

background

On 15 December 2021, Development Application DA2021/2442 was lodged with Council, seeking consent for the construction of a swimming pool, spa and pavilion at the site.

On 8 April 2022, Development Application DA2021/2442 was approved by Council under Manager delegation, subject to the conditions of consent in the Notice of Determination.

On 17 August 2022, Construction Certificate CC2022/0863 was issued in relation to DA2021/2442 by a Private Certifier.

As at the completion of this report, construction of the approved works had not commenced on site.

proposed development

The application seeks to modify the development approved pursuant to DA2021/2442 in the following ways:

- Relocation and alteration to the design and dimensions of the swimming pool,
- Deletion of the spa,
- Reduction to the size of the paved terrace adjacent to the swimming pool,
- Reduction to the size of the pavilion, including the removal of the approved bathroom,
- Retention of 1 tree approved for removal (Tree 8), and
- Deletion of the approved fireplace.

A comparison between the approved development and the modified proposal now sought is highlighted in the Architectural Plans by Casey Brown Architecture.

The modifications proposed also necessitate the following amendments to conditions in the Notice of Determination:

- Modify Condition 1, to refer to the modified plans and documents,
- Modify Condition 13, to remove reference to Tree 8 (which is now to be safely retained),
- Deletion of Conditions 30, 31, 36 and 37, which relate to the installation and operation of the approved fireplace, as the fireplace is removed in the modified proposal.

legislation, plans and policies

The following relevant state and local policies are applicable to the proposed development:

- Environmental Planning and Assessment Act (**EP&A Act**)
 - Bushfire Prone Land Map
- Environmental Planning and Assessment Regulation 2021 (**EP&A Regulation**)
- State Environmental Planning Policy (Sustainable Buildings) 2022
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - Biodiversity Values Map
- Pittwater Local Environmental Plan 2014 (**PLEP 2014**):
 - Acid Sulfate Soils Map: Class 5
 - Land Zoning Map: RU2 Rural Landscape
 - Height of Buildings Map: 8.5m
 - Biodiversity Map: Biodiversity
 - Geotechnical Hazard Map: H1
 - Heritage Map: Waterfall Cottage and Garden
- Pittwater 21 Development Control Plan (**P21 DCP**)
 - Bayview Heights Locality
 - Flood Prone Land Map
 - Bushfire Prone Land Map

local environmental plan

The site is identified on the Land Application Map of PLEP 2014 and the provisions of this policy are applicable in relation to the site and the proposed development. The relevant provisions of PLEP 2014 are considered, as follows:

Clause	Standard	Approved	Proposed	Compliance
Zone RU2 Rural Landscape				Yes
4.3 Height of buildings	8.5m	5.8m	4.2m	Yes
5.10 Heritage Conservation				Yes
5.21 Flood Planning				Yes
7.1 Acid sulfate soils	Class 5			Yes
7.2 Earthworks				Yes
7.6 Biodiversity				Yes
7.7 Geotechnical hazards				Yes
7.10 Essential services				Yes

development control plan

P21 DCP is applicable to the site and the proposed development. The site is identified within the Bayview Heights Locality. The relevant provisions of P21 DCP are considered, as follows:

Clause	Control	Approved	Proposal	Compliance
A1.7 Considerations before consent is granted	Have regard for the matters for consideration under section 4.15 of the EP&A Act.		The matters for consideration prescribed by section 4.15 of the EP&A Act have been considered (below).	Yes
A4.12 Bayview Heights Locality			The modified proposal remains consistent with the desired character of the locality.	Yes
B1.4 Aboriginal Heritage				Yes
B3.1 Landslip Hazard			An addendum Geotechnical Report has been provided to address the modified plans.	Yes
B3.2 Bushfire Hazard			An addendum Bushfire Report has been provided to address the modified plans.	Yes
B3.6 Contaminated Land and Potentially Contaminated Land				Yes
B3.11 Flood Prone Land			The modified location of the swimming pool remains outside the flood extent.	Yes
B4.18 Heathland/Woodland Vegetation			The modification does not result in any additional impacts upon	Yes

Clause	Control	Approved	Proposal	Compliance
			significant vegetation or canopy trees. Rather, the proposed modifications enable the retention of 1 tree approved for removal.	
B5.15 Stormwater				Yes
B6.1 Access driveways and Works on the Public Road Reserve				N/A
B6.2 Internal Driveways				N/A
B6.3 Off-Street Vehicle Parking Requirements	2 spaces			N/A
B8.1 Construction and Demolition – Excavation and Fill				Yes
B8.3 Construction and Demolition – Waste Minimisation				Yes
B8.4 Construction and Demolition – Site Fencing and Security				Yes
C1.1 Landscaping				Yes
C1.2 Safety and Security				Yes
C1.3 View Sharing	All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.	View sharing achieved.	The proposed modifications will not result in any adverse impacts upon views.	Yes

Clause	Control	Approved	Proposal	Compliance
C1.4 Solar Access	The main private open space of each dwelling and windows to principal living areas are to receive 3 hours of direct sunlight between 9am and 3pm in midwinter.		The proposed modifications do not result in any additional overshadowing impacts, with the shadows cast by the proposed works wholly maintained within the subject site.	Yes
C1.5 Visual Privacy	Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation.		The proposed modifications will not result in any adverse impacts upon the privacy of adjoining properties, with increased spatial separation resulting from the proposed modifications.	Yes
C1.6 Acoustic Privacy				Yes
C1.7 Private Open Space				Yes
C1.12 Waste and Recycling Facilities				Yes
C1.13 Pollution Control				Yes
C1.17 Swimming Pool Safety				Yes
C1.23 Eaves				Yes
D2.1 Character as Viewed from a Public Place	Built form is to be secondary to landscaping.			Yes

Clause	Control	Approved	Proposal	Compliance
D2.2 Scenic Protection – General				Yes
D2.3 Building Colours and Materials				Yes
D2.5 Front Building Line	20m	>60m	The modified proposal will result in a marginal increase to the front setback compared to that originally approved.	Yes
D2.6 Side and Rear Building Line	E side: 6.5m W side: 6.5m Rear: 20m	E side: 10.8m W side: 57.3m Rear: 320m	The modified proposal will result in a marginal increase to the eastern and rear setbacks compared to those originally approved.	Yes
D2.7 Building Envelope	A 45 degree plane projected from a point 3.5m above the side boundary.	Wholly maintained below envelope.	Wholly maintained below envelope.	Yes
D2.9 Landscaped Area – Non-Urban	80% minimum	98%	>98% The modified proposal will result in an increased landscaped area calculation compared to that originally approved.	Yes
D2.12 Construction, retaining walls, terracing and undercroft areas				Yes
D2.13 Scenic Protection Category One Areas				Yes

*state environmental planning policy
(resilience and hazards)*

Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land. Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The subject site has been used for residential purposes for an extended period of time, with no prior known land uses, and Council can be reasonably satisfied that there is no contamination risk. Overall, the proposed development is consistent with the relevant provisions of SEPP (Resilience and Hazards).

*state environmental planning policy
(sustainable buildings)*

An amended BASIX Certificate is provided to accompany the modified development.

environmental planning and assessment act

The application is made pursuant to s4.55(1A) of the EP&A Act, which provides:

Modifications involving minimal environmental impact 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*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (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 that requires the notification or advertising of applications for modification of a development consent, and*
- (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.*

Minimal environmental impact

The application seeks consent for various minor amendments to the design of the swimming pool and associated amenities. The modifications proposed do not result in any adverse impacts upon the surrounding natural environment or the amenity of neighbouring properties, and the resultant development remains consistent with the objectives and controls/standards of PLEP 2014 and P21 DCP.

As such, Council can be satisfied that the proposed modifications are of minimal environmental impact.

Substantially the same

In *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 (and then endorsed in *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWLR 468 and *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1992] NSWLEC 280 (**Moto Projects**)), the term “substantially” was said to mean “essentially or materially having the same essence”. Further, in *Sydney City Council v Ilenace Pty Ltd* [1984] NSWLR 414, the term “modify” was said to mean “to alter without radical transformation”.

In *Moto Projects*, it was said that the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified, but rather that the comparison should involve a qualitative and quantitative appreciation of the development in their proper contexts, including the circumstances in which the development consent was granted.

Council can be satisfied that the proposed development will not result in a radical transformation of the development as approved and that the proposed modifications will result in a development that is essentially and materially the same as that which was originally approved, as follows:

- The application remains in relation to development ancillary to an existing dwelling house (specifically a swimming pool and associated amenities).
- The general location of the swimming pool and the way in which the swimming pool relates to the existing dwelling and neighbouring dwellings remains largely unchanged.
- The impacts associated with the approved development with respect to solar access, views and privacy remain unchanged.
- The landscaped treatment of the site remains generally unchanged.
- The impact upon surrounding trees and vegetation remains generally unchanged, if not improved by virtue of the retention of an additional tree.
- The visual impact of the dwelling as seen from the public domain and neighbouring properties remains generally unchanged.
- Consistency with the relevant provisions of PLEP 2014 and P21 DCP remains unchanged, with no new or intensified areas of non-compliance.

As such, Council can be satisfied that the proposed development is substantially the same as that originally approved.

Section 4.15 of the EP&A Act

In accordance with section 4.55(3) of the EP&A Act, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The Notice of Determination issued for DA2021/2442 does not include any specific reasons for the granting of the development consent.

The matters prescribed by section 4.15(1) of the EP&A Act are considered, as follows:

Clause	Provision	Comment
(a)	<p><i>the provisions of—</i></p> <ul style="list-style-type: none"> <i>i. any environmental planning instrument, and</i> <i>ii. any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i> <i>iii. any development control plan, and</i> <i>iv. any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i> <i>v. the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i> <p><i>that apply to the land to which the development application relates,</i></p>	<p>The relevant provisions of PLEP 2014, all relevant SEPPs, and P21 DCP have been considered and addressed in this statement.</p>
(b)	<p><i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i></p>	<p>The likely impacts of the proposed development have been addressed with respect to relevant plans and policies in this statement. The proposed development will not result in any unacceptable impacts upon the natural or built environment, or any social or economic impacts in the locality.</p>
(c)	<p><i>the suitability of the site for the development,</i></p>	<p>The subject site remains suitable for the proposed development.</p>
(d)	<p><i>any submissions made in accordance with this Act or the regulations,</i></p>	<p>The application will be notified to all neighbouring properties.</p>
(e)	<p><i>the public interest.</i></p>	<p>The proposed development is in the public interest, in so far as it is consistent with the objectives and outcomes of PLEP 2014 and P21 DCP.</p>

Overall, Council can be satisfied that the proposed modifications are consistent with the provisions of s4.55 of the EP&A Act, and that the consent can be modified in the manner proposed.

conclusion

The proposed modifications are beneficial and facilitative, providing an improved and more functional layout for the swimming pool and associated amenities and the safe retention of an additional canopy tree. The modified proposal does not result in any new or intensified adverse impacts upon the amenity of adjoining properties or the natural environment and remains substantially the same as that which was originally approved. As such, Council can be satisfied that the application can be appropriately addressed under the provisions of s4.55(1a) of the EP&A Act.

The modified development remains consistent with the desired future character of the Bayview Heights Locality and the application warrants Council's support in this regard.



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