

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0398
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 36 DP 10648, 23 Hay Street COLLAROY NSW 2097
Proposed Development:	Modification of Development Consent DA2021/1824 granted for Alterations and additions to a dwelling house including a swimming pool and cabana
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Charles Parisi

Application Lodged:	29/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	02/08/2024 to 16/08/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 4.7%
Recommendation:	Approval

EXECUTIVE SUMMARY

The modification application seeks consent for the reconstruction of pre-existing floor and wall structures that were approved to be retained under DA2021/1824 but have been demolished.

As the application is made under Section 4.55(2) and necessitates the deletion of condition Nos. 15, 26 and 33 that were imposed on the development consent by the Development Determination Panel (DDP), the application is reported back to the DDP for determination.

The public exhibition of the application in accordance with Council's Community Participation Plan attracted 1 submission in objection to the proposal. The issues raised in the submission broadly relate to whether the modified development is substantially the same as the approved development, the validity of the development consent and whether the consent is able to be modified as proposed.

These matters are addressed in detail in this report, having regard to the relevant case law. The assessment concludes that the modified development is substantially the same as the approved development and that the proposed modification is supportable.

Other critical assessment issues include the proposed variations to the building height, wall height and building envelope controls, all of which relate to the reconstructed first floor wall at the southern elevation. The works proposed through the subject application, and the modified development generally, are considered to avoid adverse impacts upon adjoining properties and the public domain and are therefore acceptable.

Accordingly, the proposal is found to satisfy the relevant planning controls and has sufficient merit to be recommended for **approval** by the Development Determination Panel, subject to the conditions included in the Recommendation of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify DA2021/1824 for alterations and additions to the existing dwelling.

The proposed modification is for the reconstruction of pre-existing structures that were approved to be retained but have been demolished. Specifically, consent is sought for the reconstruction of the following building elements:

- Portions of the lower ground, ground and first floor slabs;
- Portions of the southern elevation;
- Portions of the eastern elevation; and
- Portions of the western elevation.

The intent of the proposed modification is to enable the construction of the development approved through DA2021/1824, albeit with an increased 2m side setback to the first floor of the southern elevation.

Changes to Conditions of Consent

Given that the modified development is considered to be substantially the same as the development approved under DA2021/1824 (as discussed later in this report), it is considered that Conditions 15, 26 and 33 are not necessary or enforceable. These conditions may be deleted from the consent.

15. Maintain the existing building fabric

The parts of the existing building fabric which are shown to be retained on the approved plans are to be shown as retained on the Construction Certificate drawings prior to issuing a Construction Certificate to ensure consistency with approval as alterations and additions to a dwelling house. If this cannot be achieved, a new development application will need to be lodged with Northern Beaches Council.

Reason: Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187

26. Maintain the existing building fabric

The parts of the existing building fabric which are shown to be retained on the approved plans are to be retained during construction works to ensure consistency with approval as alterations and additions to a dwelling house. If this cannot be achieved, a new development application will need to be lodged with Northern Beaches Council.

Reason: Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187

33. Maintain the existing building fabric

The parts of the existing building fabric which are shown to be retained on the approved plans are to be retained to ensure consistency with approval as alterations and additions to a dwelling house prior to the issuing of any Occupation Certificate. If this cannot be achieved, a new development application will need to be lodged with Northern Beaches Council.

Reason: Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187

Amendment of Application

Following lodgement, the application was amended to increase the side setback to the first floor southern wall. As the amendment results in a reduction in the environmental impacts of the development, re-notification of the application is not required in accordance with Council's Community Participation Plan.

Unauthorised Demolition Works

The unauthorised works undertaken on the site following approval of DA2021/1824 are limited to demolition works, which have been referred to Council's Building Control section. As no unauthorised construction works have occurred and no retrospective consent is sought, the case law established in *Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177* is not of relevance to the subject development.

Substantially the Same Development

Given the demolition and reconstruction works described above, it was necessary to consider whether the modified development is substantially the same as the originally approved development. A quantitative and qualitative analysis undertaken in this report, and having regard to the relevant case law, concludes that the modified development is "essentially or materially" the same as the approved development, thereby satisfying the requirements of Section 4.55(2).

Note: The use of the term "pre-existing" in this report refers to structures or building elements that were existing at the time of approval of DA2021/1824.

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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 36 DP 10648 , 23 Hay Street COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Hay Street.</p> <p>The site is regular in shape with a frontage of 15.24m along Hay Street and a depth of 46.34m. The site has a surveyed area of 687.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house under construction.</p> <p>The site is located on the low side of the road and has a North-east aspect. The sites slopes approximately 7.3m from front to rear.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one to two storey dwellings of varying architectural styles.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- On 22 June 2022, **DA2021/1824** for Alterations and additions to a dwelling house including a swimming pool and cabana was approved by Council.
- On 5 July 2024, Council issued a Stop Works Order in relation to the development due to the unauthorised demolition of structures that were approved/conditioned to be retained under DA2021/1824.
- On 29 July 2024, **Mod2024/0398** (subject application) was submitted to Council, seeking consent for the reconstruction of the structures that were demolished without consent.
- On 20 August 2024, the Stop Works Order dated 5 July 2024 was revoked. A new Stop Works Order was issued by Council, which allowed the construction of the swimming pool, cabana and retaining wall to continue.

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 DA2021/1824, 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>Having regard to the judgements in <i>Moto Projects (No 2) Pty Ltd V North Sydney C</i> [1999] NSWLEC 280, and more recently, <i>Arrage v Inner West Council</i> [2019] NSWLEC 85 and <i>Ganley v Mosman Municipal Council</i> [2021] NSWLEC 1124, Council is satisfied that the modified development is substantially the same as the development for which consent was originally granted.</p> <p>In Moto Projects, the following test was established:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p><u>Comment:</u></p> <p>Quantitatively, the modification involves the reconstruction various structures that were approved to be retained but were demolished, those being portions of the lower ground, ground and first floor slabs and southern, eastern and western elevations. The proposed built form, external appearance and internal layout is identical to the approved development, with the exception of the</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>increased upper level southern side setback which is increased from 1.2m to 2m.</p> <p>Qualitatively, it is evident that the modified development maintains the essential and material characteristics of the approved development. Notably:</p> <ul style="list-style-type: none"> • The use of the building as a dwelling house does not change; • The external building envelope does not change significantly, with only a minor setback increase at the southern elevation of the first floor as described earlier; • The appearance of the dwelling will be essentially the same when viewed from surrounding properties and the public domain; • The internal configuration is largely unchanged; • The floor slabs and walls are to be reconstructed largely in their pre-existing/approved locations; • The roof form and height are consistent with the approved dwelling; <p>With regard to the consideration of "the circumstances in which the development consent was granted", <i>Arrage</i> at [24] & [25] makes clear that in assessing whether the modified development is substantially the same as the originally approved development, the essential elements of the development to be identified are the features or components of the originally approved and modified developments, rather than the circumstances of the grant of the development consent.</p> <p>As described above, there is no substantial qualitative or quantitative change that would mean the modified development is not substantially the same as the approved development.</p> <p>Further, the description of the approved development and the requirement to retain certain building elements are not considered to be of significant weight, in accordance with <i>Gordon & Valich Pty Ltd v City of Sydney Council</i> [2007] NSWLEC 780 and <i>Ganley</i>.</p> <p>In view of the above, Council is satisfied that the proposed modification is substantially the same as the development for which the consent was originally granted and can be considered under Section 4.55 of the Act.</p>
(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	Development Application DA2021/1824 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
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	
(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 2021, 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.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) 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 'Matters for Consideration'	Comments
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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
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. Additional information was requested in the form of amended plans.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: 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 Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 02/08/2024 to 16/08/2024 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:
Emilie Kate Burns	25 Hay Street COLLAROY NSW 2097

The issues raised in the submissions are addressed as follows:

- Substantially the same development**

The submissions provide various reasons as to why the proposed development cannot be undertaken through a modification application, and instead requires the lodgement and approval of a new development application.

Comment:

For the reasons discussed in the S4.55(2) assessment section of this report and having regard to the relevant case law, the modified development is found to be substantially the same. As the modification satisfies the substantially the same test, a new development application is not

considered necessary.

With regard to S4.55(3) of the Act, the Assessment Report prepared for DA2021/1824 includes the following reasons for the grant of consent in its conclusion.

"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."

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

The minutes of the 22 June 2022 Development Determination Panel meeting list the below 'Statement of Reason' and this has also been considered.

"The proposal generally satisfies the relevant strategy, objectives and provisions of Warringah LEP 2011 and the Warringah DCP 2011 subject to conditions."

This assessment has taken the reasons for the grant of consent into consideration and the proposed modification is not found to be in contravention of these reasons.

The submission highlights the circumstances behind the assessment of various built form non-compliances and the demolition planning principle (Coorey) undertaken in relation to DA2021/1824. As the subject application is made under S4.55, Council is bound to consider whether the modified development is substantially the same as the approved development, rather than to reconsider the merits of the approved development or whether the modified development constitutes alterations and additions. As required by S4.55(3), an assessment of the modified development's performance against the relevant WLEP and WCDP controls has been undertaken, including merit assessment where necessary. As noted in the S4.55(2) assessment section of this report and in accordance with the relevant case law, the circumstances in which the development consent was granted are not a critical factor in determining whether the development is substantially the same.

Based on the above and the further assessment undertaken in this report, this matter does not warrant refusal of the application.

- **Compliance with consent**

The submissions raise concerns with compliance with the consent.

Comment:

Works undertaken without consent with reported to Council's Building control team for investigation. Further, any future concerns with compliance with any consent can be reported to Council's Building Control team for investigation.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The proposed modifications do not alter the original assessment by Development Engineers. Development Engineering support the proposal, with no additional or modified conditions of consent recommended.

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 (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.

Warringah Local Environmental Plan 2011

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	9.4m (NGL) 10.3m (EGL)	Unchanged	Unchanged	No (as approved)
			Proposed: 8.9m (EGL)	4.7%	No

Note: The works that are the subject of the modification application involve the reconstruction of floor structures and walls at the southern, eastern and western elevations. The proposal does not alter the approved maximum building height and the maximum breach sought through this application is 8.9m at the first floor of the southern elevation. The proposed building height variation has been calculated based on the existing ground level of the site, in accordance with the decision in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.9m
Percentage variation to requirement:	4.7%

The building height breach sought through this application is limited to the first floor of the reconstructed southern wall. The remaining structures for which the subject modification seeks consent remain below the 8.5m building height standard. The extent of the proposed 400mm height breach is illustrated below.

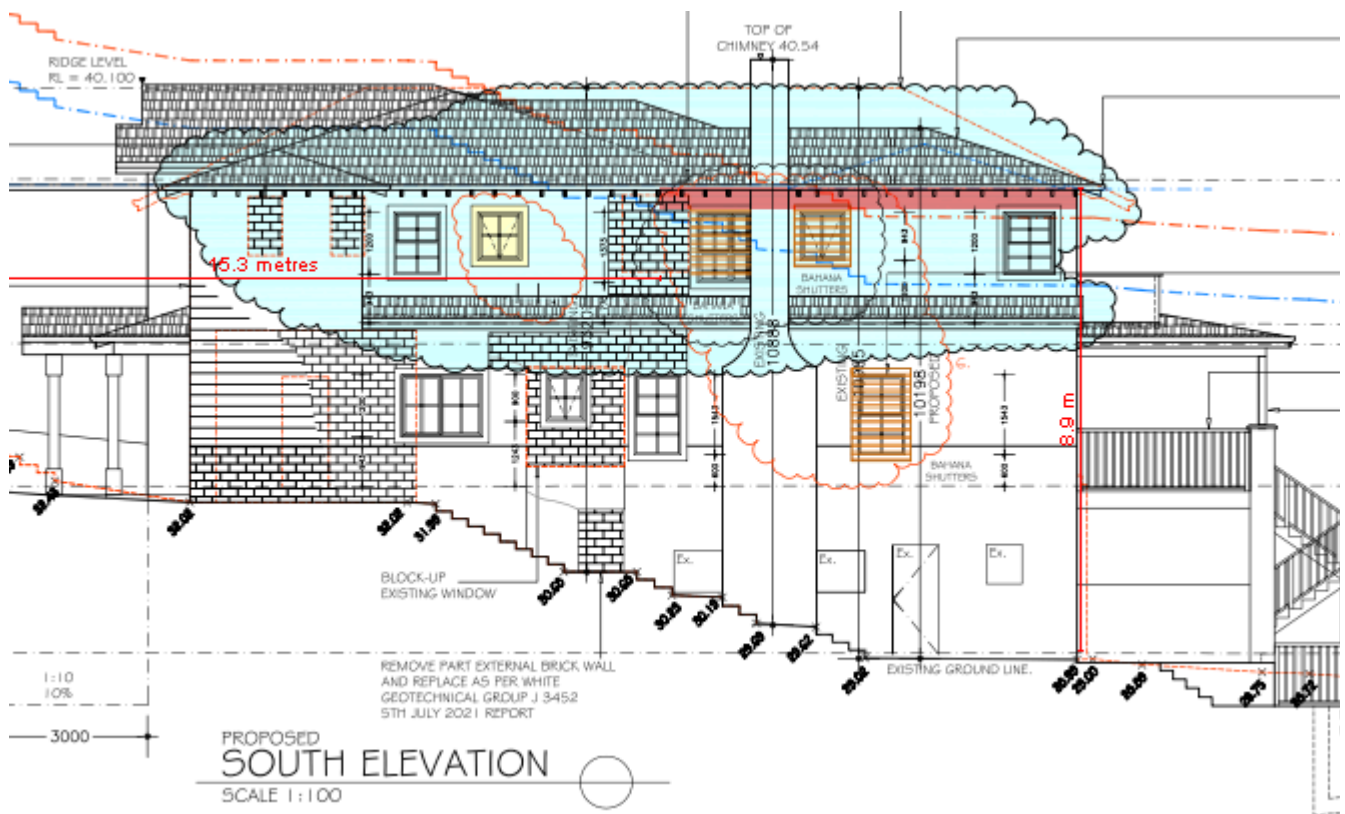


Figure 1. Proposed 400mm building height breach at the southern elevation shown shaded red.

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 Warringah LEP 2011, 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 authorises 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. 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.

4.3 Height of buildings

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

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

Comment:

The height and bulk of the modified dwelling will remain compatible with the approved development and surrounding dwellings on the eastern side of Hay Street.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The height breach associated with the reconstruction of the first floor southern wall is a maximum of 400mm and will not contribute to any adverse loss of views, privacy or solar access.

c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The visual appearance of the dwelling is largely unchanged and will remain compatible with the character of the surrounding area. As such, the proposal will not give rise to adverse impacts upon the scenic values of the locality.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The proposed height breach will not cause any adverse visual impacts when viewed from the surrounding public domain.

Conclusion

The proposal is found to achieve consistency with the height of buildings objectives and is supported, notwithstanding the minor departure from the development standard.

6.2 Earthworks

The proposed modification does not include any additional earthworks beyond those approved in the original consent.

6.4 Development on sloping land

The submitted geotechnical letter prepared by White Geotechnical Group, dated 12 July 2024, advises that the proposed modification does not alter the recommendations or assessment included in the previous 5 July 2021 report. The conditions imposed in relation to the geotechnical recommendations remain applicable to the modified development.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	North - 6.6m	Unchanged	Yes
		South - 9m (existing)	9m (proposed)	No
B3 Side Boundary Envelope	North - 4m	Outside envelope (as approved)	Unchanged	No
	South - 4m	Outside envelope (existing)	Outside envelope (proposed)	No
B5 Side Boundary Setbacks	North - 0.9m	Lower ground floor - 1.0m Ground floor - 1.0m First Floor - 2.0m	Unchanged	Yes
	South - 0.9m	Lower Ground floor - 1.2m Ground floor - 1.2m First Floor - 1.2m	Lower Ground floor - Unchanged Ground floor - Unchanged First Floor - 2m	Yes
B7 Front Boundary Setbacks	6.5m	Garage - 5.4m	Unchanged	No
B9 Rear Boundary Setbacks	6m	Dwelling - 14.2m Out House - 3.6 - 5.0m	Unchanged	Yes No
D1 Landscaped Open Space and Bushland Setting	40%	40.72% (280m2)	Unchanged	Yes

Note: The works that are the subject of the modification application involve the reconstruction of floor structures and walls at the southern and eastern elevations. The built form non-breaches sought through this application are limited to the wall height and envelope controls at the southern elevation. The approved variations to the northern boundary envelope, front and rear setback controls remain unchanged by the modification.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The 9m height of the reconstructed first floor wall at the southern elevation exceeds the 7.2m control.

Merit consideration:

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

- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The increased setback provided to the southern elevation of the first floor wall minimises the visual impact of the development when viewed from adjoining properties.

- To ensure development is generally beneath the existing tree canopy level.*

Comment:

The proposed modification does not alter the height of the approved development, which remains below the existing tree canopy level.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The development as modified enables a reasonable view sharing outcome.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The increased southern side setback to the first floor wall as noted above will minimise the visual and amenity impacts of the development on the adjoining property.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposal responds to the topography and does not involve any additional excavation works.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposal does not alter the approved roof design.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

The reconstructed first floor wall at the southern elevation breaches the building envelope control by a maximum of 2m as illustrated below.

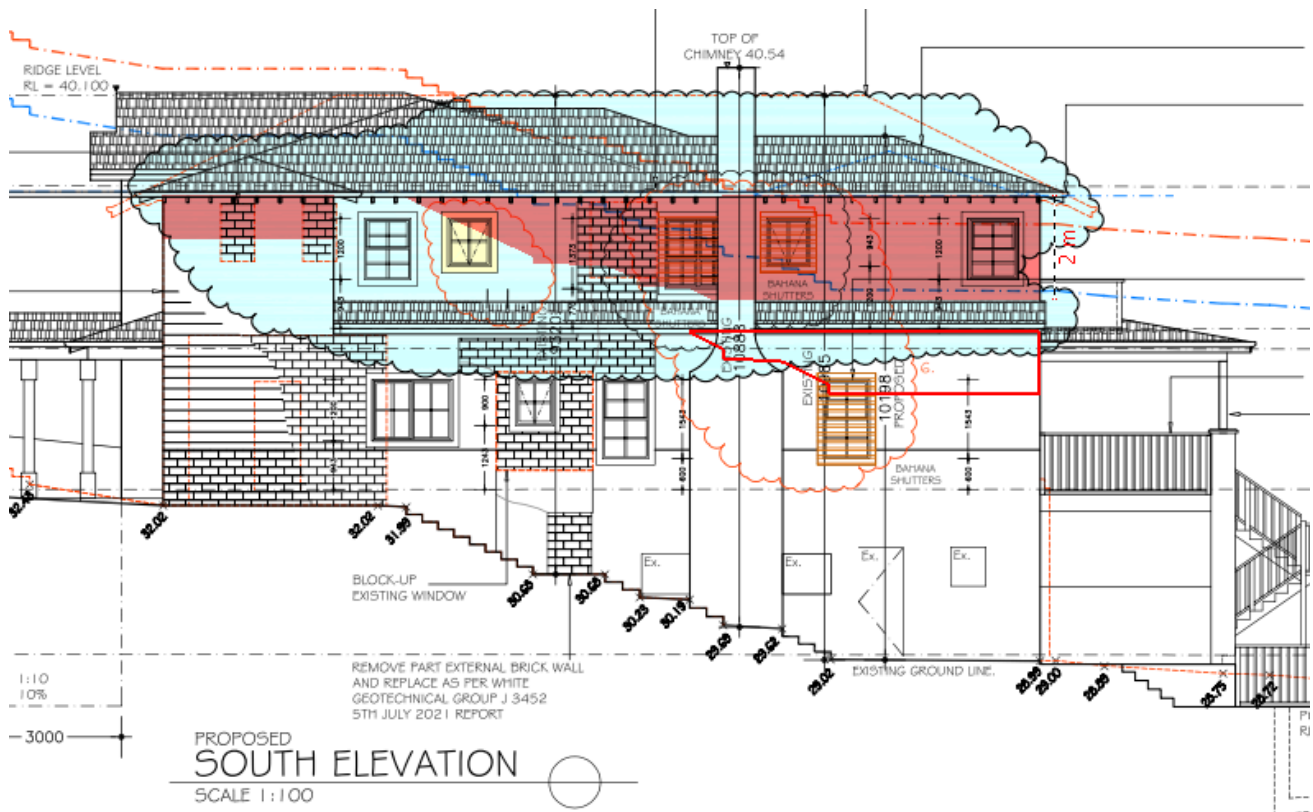


Figure 2. Southern elevation building envelope breaches shaded red. The envelope breach associated with the existing ground floor southern wall is outlined red.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed development will not be visually dominant by virtue of its height and bulk. The increased southern side setback at the first floor will result in a reduction in bulk relative to the approved development.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The modified development will maintain adequate light, solar access and privacy to adjoining properties while increasing spatial separation to the dwelling to the south.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposal responds appropriately to the topography.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B7 Front Boundary Setbacks

The proposed modification does not alter the approved variation to the front setback control.

B9 Rear Boundary Setbacks

The proposed modification does not alter the approved variation to the rear setback control.

D6 Access to Sunlight

The proposed reconstruction of the floor and wall elements will not cause any additional overshadowing or alter the approved development's compliance with the control. The increased southern setback to the first floor level will marginally improve solar access to the adjoining property (from the approved situaTION)..

D7 Views

The view loss assessment undertaken in relation to DA2021/1824 concluded that the approved development would not unreasonably impact views available from surrounding properties of the public domain. The modified development will generally retain the approved view sharing outcome, with a minor increase in the view corridor through the southern side setback by virtue of the increased first floor setback proposed. Accordingly, the view sharing outcome remains acceptable and no further assessment is undertaken.

D8 Privacy

The proposed modification does not alter the privacy impacts of the approved development, which were found to be acceptable. The conditions imposed in the development consent remain applicable to the modified development and ensure that reasonable privacy is maintained for the occupants of the subject site and adjoining properties.

D9 Building Bulk

The proposed modification includes additional building separation and articulation of the southern elevation, thereby ensuring a reasonable level of visual bulk and scale.

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 2024

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;
- Warringah Local Environment Plan;
- Warringah 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

PLANNING CONCLUSION

The modification application seeks consent for the reconstruction of pre-existing floor and wall structures that were approved to be retained under DA2021/1824 but have been demolished.

As the application is made under Section 4.55(2) and necessitates the deletion of condition Nos. 15, 26 and 33 that were imposed on the development consent by the Development Determination Panel (DDP), the application is reported back to the DDP for determination.

Council's public exhibition of the application attracted 1 submission in objection to the proposal. The concerns raised in the submission are considered in detail in this report and do not warrant refusal of the application.

The modified development is assessed as being substantially the same as the approved development and the variations proposed to the building height, wall height and building envelope controls are acceptable on merit. The modified development will not give rise to unreasonable impacts upon adjoining properties or the public domain.

On balance, the development performs appropriately against the relevant controls and is therefore recommended for **approval**.
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. Mod2024/0398 for Modification of Development Consent DA2021/1824 granted for Alterations and additions to a dwelling house including a swimming pool and cabana on land at Lot 36 DP 10648,23 Hay Street, COLLAROY, 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 454216 Mod2024/0398	The date of this notice of determination	Modification of Development Consent DA2021/1824 granted for Alterations and additions to a dwelling house including a swimming pool and cabana. Add Condition 1A Delete Condition 15 Delete Condition 26 Delete Condition 33

Modified conditions

A. Add Condition No.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
MC01	F	Site Plan	Sammy Fedeles	4 July 2024
MC04	F	Lower Ground Floor Plan	Sammy Fedeles	4 July 2024
MC05	F	Ground Floor Plan	Sammy Fedeles	4 July 2024
MC06	F	First Floor Plan	Sammy Fedeles	4 July 2024

MC07	F	Roof Plan	Sammy Fedele	4 July 2024
MC08	F	South Elevation	Sammy Fedele	4 July 2024
MC09	F	North Elevation	Sammy Fedele	4 July 2024
MC10	F	Elevation - East & West	Sammy Fedele	4 July 2024
MC11	F	Sections - AA & NN	Sammy Fedele	4 July 2024

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. Delete Condition 15. Maintain the existing building fabric to read as follows:

15. DELETED

C. Delete Condition 26. Maintain the existing building fabric to read as follows:

26. DELETED

D. Delete Condition 33. Maintain the existing building fabric to read as follows:

33. DELETED