

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0655
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 109 DP 8394, 63 Marine Parade AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling
Zoning:	E2 Environmental Conservation E4 Environmental Living
Development Permissible:	Yes - Zone E2 Environmental Conservation Yes - Zone E4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Richard John Wiseman Rowena Jane Wiseman
Applicant:	Richard John Wiseman

Application Lodged:	20/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	22/01/2020 to 05/02/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 10.6%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification includes changes as follows:

Upper floor

- Internal reconfiguration
- Reduced rear bathroom/laundry extension
- Extend Bed 1 to north and west with new balcony
- Reduce length of approved front deck

Lower floor

- Internal reconfiguration of primary and secondary dwelling areas
- Extension of Bed 2 with new ensuite
- Deletion of Bed 4 and Bathroom
- New front deck to secondary dwelling

External

- Retain existing roof over dwelling
- Modify skillion roof to gable
- Changes to doors and windows
- Relocate approved swimming pool and deck

Consideration of Section 4.55 Modification

The relevant considerations under section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are as follows:

*"(1A) **Modifications involving minimal environmental impact** A consent authority may, on a*
(b) it is satisfied that the development to which the consent as modified relates is substantially

Comment:

The consent as proposed to be modified is substantially the same development as that for which the consent was originally granted. The proposed development retains a single residential use with a secondary dwelling and does not alter the intent of the lot to be developed. The development is materially the same as originally approved, albeit with internal reconfigurations and minor changes to the external built form.

As such, the modified application is "substantially the same development" as the originally approved development and therefore may be considered under Clause 4.55(1A).

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers,

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
- Pittwater Local Environmental Plan 2014 - 5.1 Relevant acquisition authority
- Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose
- Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
- Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
- Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
- Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
- Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
- Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
- Pittwater 21 Development Control Plan - B3.2 Bushfire Hazard
- Pittwater 21 Development Control Plan - C1.4 Solar Access
- Pittwater 21 Development Control Plan - C1.5 Visual Privacy
- Pittwater 21 Development Control Plan - D1.9 Side and rear building line
- Pittwater 21 Development Control Plan - D1.16 Fences - Flora and Fauna Conservation Areas
- Pittwater 21 Development Control Plan - D1.17 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 109 DP 8394 , 63 Marine Parade AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Marine Parade.</p> <p>The site is irregular in shape with a frontage of 21.135m along Marine Parade and a depth of 89.915m to the mean high water mark. The site has a surveyed area of 1644m².</p> <p>The developed portion of the site is located within the E4 Environmental Living zone and accommodates an existing dwelling. The rear of the site is located within the E2 Environmental Conservation zone.</p> <p>The site slopes up 11.9m from the street frontage (west) towards the rear of the site (east), and then drops sharply down to the coast . The part of the site affected by the proposed development has a slope of 28.5% of 16 degrees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses. The rear of the site immediately adjoins the Pacific Ocean to the east.</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:

N0263/14 - Extensions to front and rear of the dwelling to accommodate new living areas, including cover and uncovered decking, garage extension, plunge pool, reroofing - Approved 4 December 2014.

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 N0263/14, 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

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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	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 N0263/14.
(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, Pittwater Local Environment Plan and Pittwater 21 Development Control 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 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	None applicable.
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	None applicable.

Section 4.15 'Matters for Consideration'	Comments
planning agreement	
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 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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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

A Bush Fire Report has been submitted with the application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A184304_02 dated 19 December 2019).

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

The proposed works are contained within the approved building footprint, with the exception of the swimming pool deck, which is conditioned to be deleted. Further, the part of the land that is subject to this modification is generally clear of the foreshore area and is separated by a sufficient physical distance from the coastal hazard / bluff to mitigate the risk. An updated Geotechnical Report has been submitted with this modification and raises no objection to the development in relation to the stability of the cliff.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed*

- development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) Aboriginal cultural heritage, practices and places,*
 - (g) the use of the surf zone.*

Comment:

The proposed modifications are minor in extent and will not unreasonably impact the above.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed development is for alterations and additions and relates largely to the developed part of the site.

14 Development on land within the coastal use area

- (1)
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed modification will result in no unreasonable impacts in relation to public access, natural

processes, amenity, or cultural and built heritage values.

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

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

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

Comment:

The proposed modifications are designed and sited so as to mitigate the risk of coastal hazards.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E2 : Yes Zone E4 : 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 E2 : Yes Zone E4 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10m	9.4m	10.6%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	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
5.10 Heritage conservation	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

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.4m
Percentage variation to requirement:	10.6%

Assessment of request to vary a development standard:

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

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

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

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

Comment:

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

- The proposed modification includes the retention of the existing dwelling roof, and replacement of the approved skillion roof with a smaller gable roof.
- The proposed new roof form results in a reduction to the ridge height at the front of the dwelling from RL46.5 to RL45.9.
- The new gable roof is lesser in scale and contributes considerably less bulk than the approved roof form
- The length of the proposed upper floor level is reduced by approximately 2.2m at the front of the

- dwelling, significantly reducing the proportion of the roof that is above the 8.5m height plane
- The non-compliance will result in no unreasonable amenity impacts

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

Comment:

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

- The height of the proposed gable roof is lower than that of the approved roof and reduces the bulk of the roof structure
- The non-compliance relates almost entirely to the upper level deck roof, the purpose of which is to provide weather/sun protection to the deck
- The weather protection from the roof increases the usability of the deck and the overall amenity of the dwelling

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

4.3 Height of buildings

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

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

Comment:

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

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

Comment:

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

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed change to the approved roof will result in a reduction to bulk and subsequent overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposed roof will not result in any unreasonable view impacts.

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

Comment:

The modification improves the response of the dwelling to the natural topography and significantly reduces the proportion of the dwelling that is non-compliant.

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

Comment:

The proposed modification will reduce the visual impact of the development.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The proposed modifications relate to alterations and additions to an existing dwelling.

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

Comment:

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

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

Comment:

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

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

Comment:

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

Conclusion:

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

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

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

Comment:

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

5.1 Relevant acquisition authority

No works are proposed on the portion of the site mapped as Regional Open Space.

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

No works are proposed on the portion of the site mapped as Regional Open Space.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The proposed modification includes no additional significant excavation.

7.2 Earthworks

The proposed excavation works are limited to the swimming pool. The pool is to be relocated from the northern to the southern side of the back yard area, with the existing retaining wall to be reconstructed. The works as modified will not result in substantially more excavation volume or impact to drainage patterns, amenity, the natural environment or heritage items/sites.

7.5 Coastal risk planning

The proposed modification relates to approved alterations and additions to an existing dwelling, and will not substantially alter the development in relation to coastal hazards or emergencies.

7.6 Biodiversity protection

The proposed modifications are generally contained within the approved building footprint and will not result in any additional impact to the biodiversity values on the site.

7.7 Geotechnical hazards

An updated Geotechnical Report has been submitted with this modification and raises no objection to the development in relation to geotechnical hazards or the stability of the cliff.

7.8 Limited development on foreshore area

The proposed modification includes the construction of a swimming pool, stair and deck within the foreshore area. Clause 7.8(2)(b) permits the construction of swimming pools on land in the foreshore area and the stair is considered to be a necessary ancillary structure to this pool. However, the proposed deck extends into the foreshore area beyond the swimming pool and is not permitted under (2)(a) and (2)(b). As such, a condition of consent is included requiring the deletion of the deck from the plans.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	12.6m	8.4m	Yes
Rear building line	N/A - Site is subject to FBL	N/A	N/A	N/A
Side building line	N: 2.5m	3.8m	Bed 1 robe: 1.6	No
	S: 1m	1.2m	Dwelling: Unaltered Pool: 1.03m	Yes
Building envelope	3.5m	N: Within envelope	Within envelope	Yes
		S: Outside envelope	Unaltered	As approved
Landscaped area	60%	71.2%	70.5%	Yes

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
B3.2 Bushfire Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Wildlife Corridor		
B5.1 Water Management Plan	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	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
C1.23 Eaves	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	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B3.2 Bushfire Hazard

A Bush Fire Report has been submitted in relation to the proposed modification.

C1.4 Solar Access

No shadow diagrams have been submitted with this modification application. However, the modification includes a 600mm reduction to the height and 2.2m (approx.) reduction to the length of the upper floor roof ridge at the front of the dwelling. Given the proposed changes and the orientation/siting of the subject dwelling and the adjoining property to the south, the modification is considered to maintain compliance with this control.

C1.5 Visual Privacy

Merit consideration

The proposed modification will result in a general net reduction to glazed areas facing the northern and southern side boundaries. Window No. 26 facing the northern side boundary is conditioned to have obscured glazing to maintain privacy. The proposed decks are designed and sited appropriately for privacy. The new lower level deck to the secondary dwelling is located and orientated to the front of the site and the stair location provides additional separation from the adjoining southern side boundary. The new Bed 1 deck is generally consistent with the previously approved Bed 1 balcony and is sufficiently set back from the northern boundary.

D1.9 Side and rear building line

Description of non-compliance

The proposed Bed 1 addition is non-compliant with the 2.5m building line control. The site is subject to the Foreshore Building Line control and as such the rear setback control does not apply.

Merit consideration

The non-compliance with the northern side building line control relates to the Bed 1 extension. The non-compliant portion of the building is single storey, maintains a side setback of 1.6m, and contains only a walk in robe and part of an ensuite. Given the above, the addition is considered to be appropriately designed in the context of the site to minimise any unreasonable amenity impacts resulting from the modification and the variation is supported.

D1.16 Fences - Flora and Fauna Conservation Areas

No changes to fencing are proposed.

D1.17 Construction, Retaining walls, terracing and undercroft areas

The proposed retaining wall/swimming pool is located at the rear of the dwelling and is not visible from public places.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 2019

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

Notwithstanding the proposed variation to the height of buildings development standard, the requirements of Clause 4.6 do not strictly apply to the application as it is a modification made under Section 4.55 of the EP&A Act. As Clause 4.6 does not apply, the applicant is not required to make a written request.

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. Mod2019/0655 for Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling on land at Lot 109 DP 8394,63 Marine Parade, 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
Site Plan	10 December 2019	Shim Design
Lower Floor Plan	10 December 2019	Shim Design
Upper Floor Plan	10 December 2019	Shim Design
Elevations - West, East & South	10 December 2019	Shim Design
Garage Floor Plan, North Elevation	10 December 2019	Shim Design
Sections - A & B	February 2020	Shim Design

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Bush Fire Letter	18 December 2019	Building Code & Bushfire Hazard Solutions
Geotechnical Report	12 March 2020	White Geotechnical Group

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

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

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

B. Add Condition C10. Pool Deck to read as follows:

The proposed deck structure to the east (rear) of the swimming pool is to be deleted from the plans and replaced with natural ground cover/landscaping.

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

Reason: To maintain compliance with the foreshore building line.

C. Add Condition C11. Window 26 to read as follows:

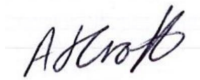
The proposed window No. 26 is to have translucent/obscured glazing.

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

Reason: To maintain privacy.

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

Signed



Adam Croft, Planner

The application is determined on 25/03/2020, under the delegated authority of:



Anne-Marie Young, Acting Development Assessment Manager