

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR THE MODIFICATION OF CONSENT UNDER CLAUSE 4.55(2) OF THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT FOR THE
DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION
OF A NEW DWELLING**

LOCATED AT

81 PRINCE ALFRED PARADE, NEWPORT

FOR

MATTHEW AND KELLY SCHOTT



**Prepared
October 2019**

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1.0 Introduction

This Statement of Environmental Effects accompanies an application under Clause 4.55(2) of the Environmental Planning & Assessment Act 1979 to modify a consent for the demolition of the existing structures and construction of a new dwelling at **81 Prince Alfred Parade, Newport** on behalf of Matthew and Kelly Schott.

The Notice of Determination of DA N0285/16 was issued by Pittwater Council on 18 October 2016 and provided for *“Demolition of existing structures and construction of a new dwelling”*.

A subsequent modification application MOD2019/0330 was submitted on 10 July 2019 and withdrawn on 9 September 2019.

This current application will seek to modify the consent as issued, to address the proposed revisions to the plans which have been detailed in the amended details prepared by Rama Architects, dated 20 September 2019 comprise:

- *S4.55_000 Cover Page & Drawing Schedule*
- *S4.55_001 Site Plan*
- *S4.55_100 Garage Floor General Arrangement Floor Plan*
- *S4.55_101 First Floor General Arrangement Floor Plan*
- *S4.55_102 Second Floor General Arrangement Floor Plan*
- *S4.55_300 Elevations Sheet 01*
- *S4.55_301 Elevations Sheet 02*
- *S4.55_302 Elevations Sheet 03*
- *S4.55_400 Section Sheet 01*
- *S4.55_500 Landscape Concept Plan*
- *S4.55_900 9am Shadow Diagram Plan*
- *S4.55_901 12pm Shadow Diagram Plan*
- *S4.55_902 3pm Shadow Diagram Plan*

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Pittwater Local Environmental Plan 2014*
- *Pittwater 21 Development Control Plan 2014*

2.0 Property Description

The subject allotment is described as 81 Prince Alfred Parade, Newport, being Lot 109 within Deposited Plan 13457 and is zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The site is identified within the Class 5 Acid Sulfate Soils Area. This will be discussed in further detail within this report.

The site is noted as 'W Hazard H1' on Council's Geotechnical Hazard Map. A Geotechnical Investigation has been prepared by Douglas Partner Pty Ltd, Project no. 85382.00 dated 23 March 2016 (Revised Project No. 85382.1 dated 2 October 2019), and this will be discussed in further detail within this report.

The site is noted as being subject to State Environmental Planning Policy (Coastal Management) 2018. This will be addressed in further detail within this report.

The site is identified as being within a Terrestrial Biodiversity Zone. This will be discussed in further detail within this report.

There are no other known hazards affecting the site.

3.0 Site Description

The site is located on the southern, higher side of Prince Alfred Parade. The site is currently being developed with a new dwelling, pursuant to DA N0285/16e.

The landfalls towards the street and the approved dwelling has stepped floor levels to respect the site's contours. Stormwater from the roof areas is to be directed to the street gutter.

The site is regular in shape, with an angled front boundary measuring 14.025m in total. The eastern and western side boundaries measure 35.825m and 36.54m respectively. The rear, southern boundary measures 14.02m and the total site area is 507.2m².

The approved design provides for a basement garage with vehicular access from Prince Alfred Parade.

The details of the land are contained within the survey report prepared by Geographic Solutions Surveyors Pty Ltd, Reference No. 2552, dated 10 December 2014, which accompanies the DA submission.



**Fig 1: Location of Subject Site
(Source: Google Maps)**



Fig 2: View of subject site, looking south from Prince Alfred Parade



Fig 3: View of neighbouring properties to the east, looking south-east from Prince Alfred Parade



Fig 4: View of neighbouring properties to the west, looking south-west from Prince Alfred Parade

4.0 The Surrounding Environment

The general vicinity of the site is characterised by residential dwellings and a range of detached outbuildings, of a variety of architectural styles.

The varying age of development in the area has resulted in a mix of materials and finishes, with the development in the area generally presenting a consistent setback to the public domain.

It is not uncommon for properties in this area to have a swimming pool in their rear year.

The surrounding properties comprise a range of original style dwellings with an emergence of modern dwellings and additions. The surrounding dwellings comprise a mix of single and two storey dwellings.

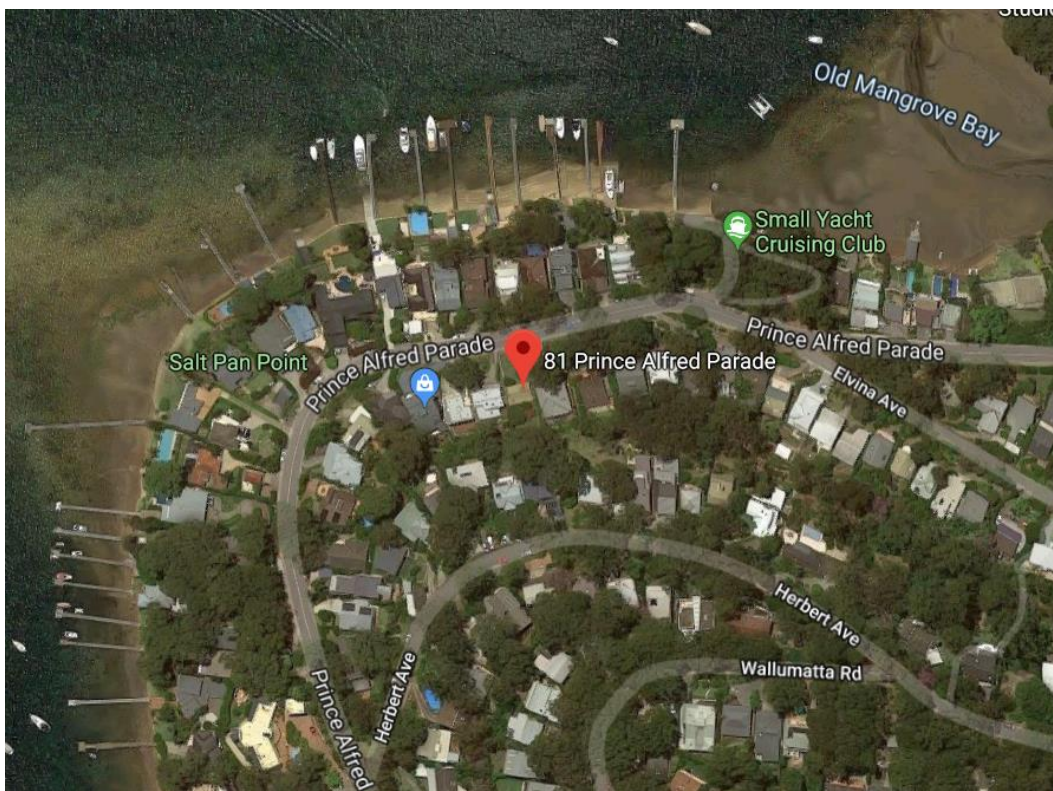


Fig 5: Aerial Photograph of surrounding locality
(Source: Google maps)

5.0 Proposed Development

As detailed within the accompanying plans, the proposal seeks to modify DAN0285/16 under Section 4.55(2) of the Environmental Planning & Assessment Act 1979.

The approved development under DA N0295/16 provided for “*Demolition of existing structures and construction of a new dwelling*”.

The proposed modifications are detailed in the revised architectural submission prepared by Rama Architects and comprise:

LANDSCAPING

1. External– proposed modification (Alteration) to garden retaining walls along Eastern Boundary at building line. Slight reconfiguration of the retaining walls to accommodate external stairs.
2. External – proposed modification (Alteration) of External Stairs adjacent entrance. Relocation 1500mm to South in plan to align with front of building wall.
3. External – proposed modification (Alteration) of External Stairs up to rear lawn. Relocation of 1300mm East & 3200mm South in plan.

GARAGE FLOOR PLAN

4. External – proposed modification (Alteration) of entry door D02. Relocated 600mm to South in plan.
5. Internal–proposed modification (Alteration) of internal Stairs. Relocated 1500mm East, 1000mm South in plan.
6. Internal–proposed modification (Alteration) of Storage and configuration of internal walls at rear of Garage.
7. Internal–proposed modification (Alteration) of Lift. Relocated 5000mm South in plan.

FIRST FLOOR PLAN

8. External – proposed modification (Removal) Covered Terrace. Replaced with internal space as part of Living Room.
9. External – proposed modification (Removal) reduction in overall building bulk and scale on North elevation. Approx. 3400mm.
10. External – proposed modification (Addition) of First Floor excavation to South.
11. External – proposed modification (Alteration) of window W01 on West elevation. Relocated 1000mm North in plan.
12. External – proposed modification (Alteration) of window W02 on West elevation. Modified to casement window.
13. External – proposed modification (Removal) of previously approved door D03 & windows W03, W04.
14. External – proposed modification (Alteration) of door D04. Relocated to suit facade. Modified to 5 stacker door.
15. External – proposed modification (Alteration) of door D05. Relocated to suit facade. Modified to single swing door.
16. External – proposed modification (Addition) of window W11 to Powder Room.
17. External – proposed modification (Addition) of window W12 & door D10 to Laundry.

18. Internal – proposed modification (Alteration) of Rumpus, Bathroom and Bed 1 configuration. Modified to Kitchen, Dining & Living in similar building footprint.
19. Internal – proposed modification (Alteration) of Internal Stairs. Relocated 2000mm South in plan.

SECOND FLOOR PLAN

20. External – proposed modification (Removal) of Balcony and Privacy Screen. Replaced with internal space as part of Master Walk in Robe.
21. External – proposed modification (Removal) reduction of External Balcony to North elevation.
22. External – proposed modification (Removal) of previously approved door D07.
23. External – proposed modification (Addition) of window W13 to Lounge.
24. External – proposed modification (Alteration) of door D08 on South elevation. Modified to 3 panel stacker door.
25. External – proposed modification (Alteration) of window W05 on South elevation. Modified to highlight window.
26. External – proposed modification (Removal) of previously approved door D09 & window W06. Replaced with adjacent external wall.
27. External – proposed modification (Addition) of window W14 to bedroom 3.
28. External – proposed modification (Alteration) of window W07 on West elevation. Modified to casement window with frosted glazing.
29. External – proposed modification (Alteration) of window W08 on West elevation. Modified to casement window with frosted glazing.
30. External – proposed modification (Addition) of window W15 to Master Ensuite with frosted glazing.
31. External – proposed modification (Addition) of window W16 to Master Ensuite.
32. External – proposed modification (Alteration) of window W09 on North elevation. Reduced from 5400mm to 600mm window.
33. External – proposed modification (Alteration) of door D06 on North elevation. Relocated 1300mm East in plan.
34. External – proposed modification (Removal) of previously approved window W10.
35. External – proposed modification (Addition) of window W17 to Walk in Robe.
36. Internal – proposed modification (Alteration) of Kitchen, Dining & Living configuration. Converted to Master Bedroom, Bedrooms, Bathrooms and lounge in similar building footprint.

ROOF

37. External – Proposed Modification (Alteration) of leading Northern edge of roof. Retracted South Approx. 1700mm.
38. External – Proposed Modification (Alteration) from Hip Roof to Gable Roof resulting in lower wall height along both side boundaries thus improving the encroachment of building envelope of the previously approved DA.

In summary, the proposed external modifications to the dwelling result in a minor reduction of bulk and scale, whilst resulting in substantially the same development to that approved under DA No.285/16.

The proposed alteration from the approved hip roof form to a simplified Gable Roof structure, approximately centrally located on the site, creates a reduction in overshadowing to both adjoining

properties at No's 79 & 83 Prince Alfred Parade, whilst maintaining the previously approved upper ridge height. The gable roof structure also provides an internal raked ceiling generating a more desirable amenity outcome within the building, capturing the northern aspect and adhering to updated BASIX requirements.

Additionally, the previously approved finished floor levels for each level remain the same with the intent of upholding the characteristics of the previously approved DA. The northern and eastern building/facade lines have been altered slightly to create a further setback from their respective boundary lines, thus improving the visual impact on the natural environment from Pittwater, Prince Alfred Parade and surrounding neighbours.

The alteration to the northern façade also results in increased view sharing while upholding the desired character of the Newport locality, whilst maintaining substantially the same development.

The modifications to the internal configuration improve the spatial layout and general amenity within the building footprint and improve the internal amenity for the building's occupants.

Whilst generally there has been a reduction in the depth of excavation to the garage level, there proposal includes minor additional excavation at the first floor level for the laundry and ensuite to improve the function of the space. This proposed excavation does not exceed the previously approved overall building footprint and results in minimal impact to the adjacent neighbours.

The extent of the proposed excavation is acknowledged in the supporting Geotechnical Report.

The proposed modifications to DA NO 285/16 at 81 Prince Alfred Parade will have only minor environmental impact and will result in substantially the same development at the completion of construction, and for this reason we request that this Section 4.55(2) is worthy of Council's support.

The development indices for the proposal are:

Site Area	507.2m ²
Required Landscaped Area	60% or 304.32m ²
Approved Landscaped Area	54% or 275m ²
Proposed Landscaped Area	54.6% or 276.8m ²

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage to support the modified proposal.

6.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal meets water, thermal and energy standards required by BASIX. A revised BASIX certificate has been submitted with the Application to Modify Consent.

6.3 State Environmental Planning Policy (Coastal Management) 2018

The subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is applicable to the proposed development.

The stated Aim of the Policy under Clause 3 is to:

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

The Coastal Management Act 2016 states within **Clause 3**:

The **objects** set out in **Clause 3** of the Coastal Management Act 2016 are:

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and*
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and*
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and*
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and*
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and*

- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and
- (h) to promote integrated and co-ordinated coastal planning, management and reporting, and
- (i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and
- (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and
- (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and
- (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and
- (m) to support the objects of the Marine Estate Management Act 2016.

It is submitted that the assessment detailed under the Statement of Environmental Effects suggests that the proposed development is consistent with the objects of the SEPP (Coastal Management) 2018, as set out in Clause 3 of the Coastal Management Act 2016.

The matters for consideration under Division 1 of SEPP (Coastal Management) 2018 are:

10 Development on certain land within coastal wetlands and littoral rainforests area

(1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
- (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
- (c) the carrying out of any of the following:
 - (i) earthworks (including the depositing of material on land),
 - (ii) constructing a levee,
 - (iii) draining the land,
 - (iv) environmental protection works,
- (d) any other development.

Comment: The subject application is seeking to modify the original consent – DA NO 285/16.

The matters for consideration under Division 2 of SEPP (Coastal Management) 2018 are:

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 modified proposal will be carried out in accordance with the recommendations of the consulting Structural and Geotechnical Engineers and will therefore satisfy the provisions of this clause.

The matters for consideration under Division 3 of SEPP (Coastal Management) 2018 are:

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.*

(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 modified proposal will not result in any loss of access to the foreshore area.

Stormwater from the approved development will continue to be directed to the street gutter.

The matters for consideration under Division 4 of SEPP (Coastal Management) 2018 are:

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock 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 modified proposal will continue to be wholly contained within the site and will not affect any public access to any foreshore area. Furthermore, the new works will not result in any overshadowing to the foreshore area.

The proposal provides for a revised design for the new dwelling, which is consistent with the original approval and which is modest in bulk and scale and will not adversely affect the visual amenity of the locality.

The matters for consideration under Division 5 of SEPP (Coastal Management) 2018 are:

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 modified proposal will continue to provide for the construction of a new dwelling. The proposed new works are largely contained within the footprint of the approved dwelling and are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

The assessment has concluded that the proposed development is consistent with the matters for consideration under the SEPP (Coastal Management) 2018.

6.4 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The SEPP commenced on 25 August 2017 and replaced Clause 5.9 of Pittwater Local Environmental Plan 2014.

The aims of the SEPP are detailed in Clause 3 and note:

The aims of this Policy are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

In this instance, the proposal will not see any loss of any substantial vegetation and is therefore considered to be consistent with the aims of the SEPP.

6.5 Pittwater Local Environmental Plan 2014

Clause 2.2 Zone objectives and Land Use Table

The site is zoned E4 Environmental Living under the provisions of the PLEP 2014.

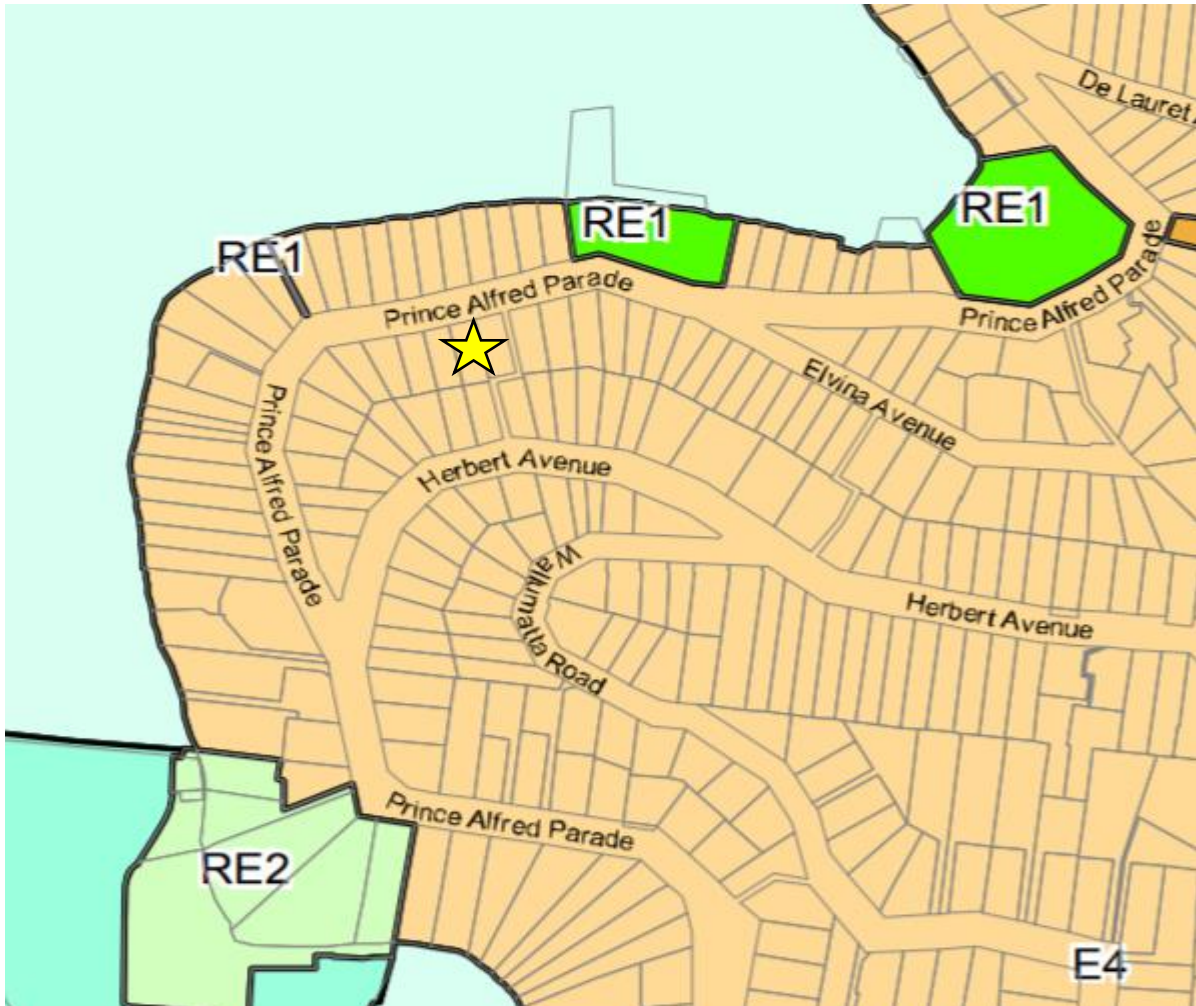


Fig 6: Extract of Pittwater Local Environmental Plan 2014

The proposed modifications to the approved new dwelling are considered to be permissible with the consent of Council.

The development of and use of the land for residential purposes within the E4 Environmental Living Zone is consistent with the zone objectives, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

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

It is considered that the proposed new works will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with the original approval for the demolition of the existing structures and construction of a new dwelling, which complements the existing detached style housing within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality. The proposal provides for modifications to the approved design for a new dwelling which will not have any significant or adverse impact on the neighbouring properties.
- The setbacks are compatible with the existing surrounding development.
- The modified proposal does not have any adverse impact on long distance views.

Clause 4.3 – Height of Buildings

The maximum building height in this portion of Newport is 8.5m. The modified dwelling will retain the approved maximum ridge level of RL 32.7 and as such, the approved overall height of the dwelling remains unchanged.

Clause 7.1 – Acid Sulfate Soils

The site is identified as being within the Class 5 Acid Sulfate Soils Area. Given the minor nature of the proposed works, it is not anticipated that acid sulfate soils will be encountered.

Clause 7.2 – Earthworks

The modified proposal will require some minor additional excavation of the site to accommodate the proposed new works. Accordingly, a Geotechnical Investigation has been prepared by Douglas Partners, Project No 85382.01 dated 2 October 2019. Subject to compliance with the recommendations of the consulting Structural and Geotechnical Engineers, the modified proposal will satisfy the provisions of this clause.

Clause 7.6 – Biodiversity protection

The land is noted within Council's Biodiversity mapped area.

- (1) *The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:*
- (a) *protecting native fauna and flora, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

The modified development does not necessitate the removal of any significant vegetation and will largely retain the existing area of soft landscaping. Accordingly, the proposal is therefore considered to be consistent with the provisions of this clause.

Clause 7.7 – Geotechnical Hazards

The site is identified as 'W Hazard H1' on Council's Geotechnical Map. The proposal seeks to provide for the construction of alterations and additions to an existing dwelling including new garage, lift, modification of existing driveway, new swimming pool and associated decking.

Accordingly, a Geotechnical Investigation has been prepared by Douglas Partners, Project No 85382.01 dated 2 October 2019, which concludes the following:

It is considered that from a geotechnical perspective the revised scope of site development depicted within the abovementioned drawings does not require any changes to be made to our previous report. The comments and general recommendations previously provided in our report remain appropriate to the revised scope of the development.

The proposal is therefore considered to satisfy the provisions of this clause.

There are no other clauses of the PLEP 2014 that are considered to be relevant to the proposed development.

6.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

6.1 The provisions of any environmental planning instrument

The modified proposal is subject to the provisions of the Pittwater Local Environmental Plan 2014 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

6.2 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 Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

6.3 Any development control plan

The revised development has been designed to comply with the requirements of Council's Pittwater 21 Development Control Plan.

The application has been prepared having regard to the requirements of Section B, Section C and Section D of the Pittwater 21 DCP.

The modified development respects the streetscape character objectives of the DCP and will provide a cohesive and sympathetic addition to the site which will make a positive contribution to the area.

6.4 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

No matters of relevance are raised in regard to the proposed development.

6.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

6.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality

It is considered that the proposal, which seeks to modify the consent for the demolition of the existing structures and the construction of a new dwelling, will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. The modified proposal is considered to result in a development that is compatible with and will complement the character of the area.

The modified proposal is considered to be well designed having regard to the relevant provisions of the Council's PLEP 2014 and Council's Codes and Policies, in particular the Pittwater 21 DCP and the Newport Locality Statement.

6.7 The suitability of the site for the development

The subject land is currently zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014 and is considered suitable for the proposed development and is permissible under the provisions of the LEP.

6.8 Submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

6.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

7.0 Conclusion

The proposed modifications to DA NO 285/16 at 81 Prince Alfred Parade will have only minor environmental impact and will result in substantially the same development at the completion of construction, and for this reason we request that this Section 4.55(2) is worthy of Council's support.

JUSTIFICATION

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under Section 4.55(2) which notes:

(2) Other modifications

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*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

Accordingly, for the Council to approve the S4.55 Modification Application, the Council must be 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.

LEGAL TESTS

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289* where His Honours states:

[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.

[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.

[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).

In my opinion, in terms of a “qualitative comparison”, the Modification Application is substantially the same development as that which was approved within DA N0285/16.

The works seek to provide for the demolition of the existing structures and the construction of a new dwelling, which maintains a scale and form which is generally consistent with the original approval.

The revised design does not introduce any significant issues for the neighbouring properties in terms of view loss or privacy.

When viewed from the public domain or from the neighbouring properties, the development will largely present the same visual impact and appearance to that originally approved.

Similarly, the application is substantially the same development when subjected to a “quantitative comparison”, as the works will continue to provide for a “*Demolition of existing structures and construction of a new dwelling*” in a location and in a form which is consistent with the consent.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination and the application can be reasonably assessed by Council under S4.55 of the Act.

CONCLUSION

The test established in **Moto** requires both a quantitative and a qualitative assessment.

In terms of the quantitative extent of the changes to the originally approved development, the works which are the subject of the application are not significant and do not inherently alter the nature and form of the additions to the dwelling as originally approved by Council.

The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally as approved, for the same purpose and by virtue of the floor levels and overall ridge level being unchanged, with be generally consistent with the physical appearance of the approved building.

Consistent with the Court decision in **Moto**, the Council would be satisfied that the development as modified would remain essentially or materially the same as the approved development.

This Court decision also makes clear that the Council has the power to approve the Modification Application.

The proposed modification is justified on the basis that:

- The proposed works are generally consistent with the application as initially lodged and as detailed under the original Notice of Determination dated 18 October 2016.
- The proposal is “substantially” the same development, as defined by the Environmental Planning & Assessment Act.

Council’s support of the modification to the form of the proposed development is sought in this instance.

Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

Yours faithfully,



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